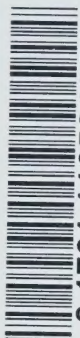


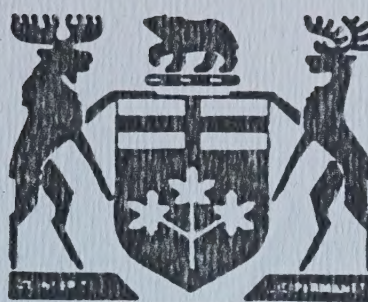
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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 151

DATE: Tuesday, October 24th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

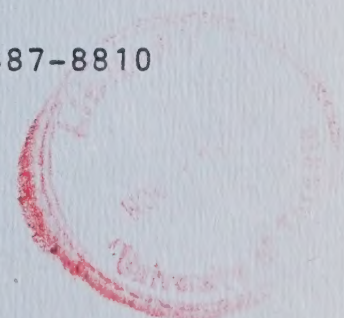
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -


IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, October 24th,
1989, commencing at 8:30 a.m.

VOLUME 151

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN McNICOL,</u>	
<u>FRANK D. KENNEDY,</u>	
<u>J. JOSEPH CHURCHER,</u>	
<u>RICHARD WILLIAM GROVES,</u>	
<u>HARTLEY MULTAMAKI,</u>	
<u>ALBERT BISSCHOP,</u>	
<u>ROGER W. DAVISON,</u>	
<u>ROBERT THOMAS FLEET, Resumed</u>	25946
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
907	Excerpts from Red Lake District Fisheries Management Plan.	25946
908	District Fisheries Management Plans, Planning Manual.	25946
909	NAN Interrogatory No. 9, (Panel 15).	25946

1 ---Upon commencing at 8:35 a.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Good morning. Please be seated.

4 Just before we commence this morning, the
5 Board wishes to advise that we should have the draft
6 procedural directive ready to be distributed tomorrow
7 afternoon so that the parties may take it away with
8 them.

9 And it would be our expectation that we
10 would next, on a procedural basis, deal with a
11 discussion on October 31st with respect to any proposed
12 relocation of parts of the hearing and then allow the
13 parties one final opportunity to comment on the draft
14 procedural directives subsequent to that or on the same
15 day, depending on the timing, after which the Board
16 would finalize the directives and issue them and they
17 would essentially govern the hearing from that point on
18 until changed by further directive, if the same should
19 become necessary.

20 MR. COSMAN: Mr. Chairman, if I might
21 just on a procedural matter as well. As you know, some
22 of us are going to be taking your draft procedural
23 directive to our Board to obtain instructions.
24 Argument will take place next Tuesday, October 31st.
25 What I would like to just address you on is the timing

1 that day of that argument.

2 Because of certain meetings, there may be
3 some difficulty, from our perspective, of dealing with
4 it first thing in the morning. It may be that someone
5 would be coming up that morning by plane and I am just
6 wondering if there is any possibility we can just
7 ensure that the 11:00, 11:30, or whatever the first --
8 some time after the first plane from Toronto has
9 arrived, whether it is 11:30, 12:00 or 2:00.

10 THE CHAIRMAN: Very well. We don't want
11 to take any more time than is necessary away from the
12 hearing of evidence, so perhaps we will deal with the
13 procedural matters on October 31st towards the end of
14 the day.

15 Mr. Freidin?

16 MR. FREIDIN: Mr. Chairman, as well in
17 relation to a procedural note, I would just ask that
18 the parties consider and perhaps the Board consider
19 what an appropriate time would be for the submission of
20 statements of issue in relation to Panel 17. I wish to
21 raise that matter later, and I don't want to take the
22 time do it now, but perhaps at the end of the day we
23 could consider that matter.

24 THE CHAIRMAN: Very well.

25 Mr. Hunter, are you ready?

1 MR. HUNTER: Mr. Chairman, Mrs. Koven,
2 Mr. Martel, gentlemen.

3 Perhaps, Mr. Chairman, I might be allowed
4 to make a few initial comments which will hopefully
5 assist in the cross-examination today.

6 Firstly, we have substantially altered
7 our cross-examination and we will be focusing
8 principally on the terms and conditions as proposed by
9 the Ministry of Natural Resources for the purpose of
10 posing to the witnesses various propositions and
11 alternatives to those identified in the terms and
12 conditions. Obviously they are free to give their
13 opinions in whatever way they choose fit, we hope to
14 proceed through those questions in a rather expeditious
15 fashion.

16 I want to indicate to the Board that the
17 questions will be phrased in such a way so as to ask
18 the Ministry as to whether or not they would agree or
19 disagree with our views. I want to ensure the Board
20 that in no way suggests that the Board would approve or
21 disapprove. So if I slip at any particular point in
22 time, I extend my apologies now.

23 We have reviewed extensively Ms.
24 Swenarchuk's cross-examination and Mr. Lindgren's and
25 we will only have a few questions, and I am fairly

1 confident that we will not be treading into areas that
2 they have already dealt with. We will be coming at the
3 Red Lake Plan from our perspective and I don't believe
4 that there is any substantial areas of overlap there.

5 The other point I would raise -- or two
6 other points. Obviously, all of my questions are in
7 regards to the Treaty 9 area alone. They do not and
8 should not be interpreted by the witnesses to reflect
9 any native communities beyond Treaty 9, whether in the
10 southern portion of the province, but within the area
11 of the undertaking, or with respect to Treaty 3.

12 THE CHAIRMAN: Could you just refresh the
13 Board's memory as to what that area is?

14 MR. HUNTER: It is generally the area of
15 the height of land just north of Thunder Bay, give or
16 take 50 miles.

17 Perhaps, Mr. Chairman, I could refer you
18 to Exhibit 26 which we had submitted previously. It is
19 roughly the area of the height of land from the James
20 Bay coast -- sorry, south of James Bay, it is this line
21 here which is roughly the height of land. This is
22 Treaty 3, and this area north to Hudson's Bay to the
23 Manitoba border to James Bay area and south to roughly
24 Chapleau, give or take, is the Treaty 9 area.

25 THE CHAIRMAN: Thank you.

1 MR. MARTEL: Do you go all the way over
2 to the Temagami area, in that vicinity?

3 MR. HUNTER: North of Temagami.

4 MR. MARTEL: North of Temagami.

5 MR. HUNTER: Temagami is Robinson/Huron
6 and this area here is Robinson/Superior.

7 The last comment I would make, and I
8 would ask Mr. Campbell to address this - he and I have
9 spoken about it briefly - is that we have gone through
10 the terms and the conditions as proposed by the
11 Ministry. We have cross-referenced those terms and
12 conditions to the class assessment document and to the
13 timber management manual in order to attempt to
14 determine the extent and the degree of differences
15 between those three documents.

16 This is a subject that we do not want to
17 get involved with except to a very limited degree today
18 in reference to term and condition 30. But I have
19 approached Mr. Campbell with the view to trying to come
20 up with an accepted document between the parties with
21 respect to the similarities and differences between
22 these terms and conditions and that which exists in
23 other pieces of paper, and perhaps Mr. Campbell can
24 address that matter. That would not presume areas of
25 disagreement obviously on interpretation, but

1 technically if we can do that.

2 MR. CAMPBELL: Mr. Chairman, Mr. Hunter
3 spoke to me this morning on this matter and I advised
4 him that we have - it is about four weeks ago I think -
5 provided to the Ministry of Natural Resources a copy of
6 the terms and conditions which we have annotated to try
7 and do this kind of cross-referencing on a fairly
8 detailed basis throughout and highlighting items which
9 we have identified as being new or changed from the
10 original documentation to the terms and conditions.

11 In providing that to the Ministry, we had
12 expressed the view that we would appreciate their
13 confirming that we had caught everything or that there
14 weren't any inaccuracies so that we would have an
15 agreed working document for that purpose and wouldn't
16 need to nitpick on it throughout the course of looking
17 at all of this.

18 I have been advised by MNR that the
19 exercise of doing that review of our work is nearly
20 complete. There are some changes that need to be
21 made - and I haven't seen it so I don't how substantial
22 they are - and I understand that some notes covering
23 this are being prepared and will be available perhaps
24 by the end of the week or thereabouts.

25 I have asked that, if at all possible, it

1 would being extremely helpful if that was available
2 before my cross-examination because we will be
3 referring to the terms and conditions throughout.

4 And just so that everyone has a clear
5 picture of what's happening, I think it will be useful
6 for everyone.

7 THE CHAIRMAN: Well, it will certainly be
8 helpful if the other parties can signify their
9 agreement as well to that document in its final form so
10 that, as Mr. Hunter indicates, there isn't a lot of the
11 nitpicking over where the changes exist, although the
12 parties might well disagree with the interpretation.

13 MR. CAMPBELL: Yes. Thank you, Mr.
14 Chairman.

15 THE CHAIRMAN: Thank you.

16 MR. HUNTER: Mr. Chairman, perhaps to
17 facilitate, I believe we only have three exhibits, so
18 perhaps I could introduce those right now, if my friend
19 doesn't object, so I don't have to interrupt the...

20 I have provided a list of the exhibits
21 and the materials we are cross-examining on to Mr.
22 Freidin yesterday and I believe he received it this
23 morning, so hopefully all of those materials are
24 available.

25 We will be introducing three exhibits,

1 one is entitled: The Red Lake District Fisheries
 2 Management Plan, and those are excerpts of that plan;
 3 the other is the District Fisheries Management Plans in
 4 their entirety, and it's called The Planning Manual --
 5 District Fisheries Management Plans, Planning Manual;
 6 and the third exhibit is Interrogatory No. 9, Panel 15,
 7 Nishnawbe-Aski Nation.

8 THE CHAIRMAN: Very well. The Red Lake
 9 District Fisheries Management Plan excerpts will be
 10 Exhibit 907; the District Fisheries Management Plans,
 11 Planning Manual will be Exhibit 908; and Interrogatory
 12 No. 9 submitted by NAN for Panel 15 will be Exhibit
 13 909.

14 MR. HUNTER: (handed)

15 THE CHAIRMAN: Thank you.

16 ---EXHIBIT NO. 907: Excerpts from Red Lake
 17 District Fisheries Management
 Plan.

18 ---EXHIBIT NO. 908: District Fisheries Management
 19 Plans, Planning Manual.

20 ---EXHIBIT NO. 909: NAN Interrogatory No. 9 (Panel
 15).

21 JOHN McNICOL,
 22 FRANK D. KENNEDY,
 J. JOSEPH CHURCHER,
 23 RICHARD WILLIAM GROVES,
 HARTLEY MULTAMAKI,
 24 ALBERT BISSCHOP,
 ROGER W. DAVISON,
 25 ROBERT THOMAS FLEET, Resumed

1 CROSS-EXAMINATION BY MR. HUNTER:

2 Q. Mr. Multamaki, if you would, I would
3 refer you to Exhibit 818-2 which is the primary road
4 corridors options material and in there there is a map.
5 And I believe that map is entitled: Red Lake Crown
6 Management Unit, 20-year Preliminary Areas of Concern,
7 Primary Road Corridors Options.

8 Do you have that, sir?

9 MR. MULTAMAKI: A. Yes, I do.

10 THE CHAIRMAN: We don't have that; do we?

11 MR. HUNTER: But you don't.

12 THE CHAIRMAN: Right.

13 MR. MULTAMAKI: I think it is Exhibit
14 836. In fact, it is the large map that's directly
15 behind me.

16 MR. HUNTER: I apologize, Mr. Chairman.
17 I had thought that it was in the materials. There was
18 only one copy.

19 THE CHAIRMAN: Okay. Well, it doesn't
20 matter.

21 MR. HUNTER: I am just wondering the best
22 way to work with this then.

23 MR. FREIDIN: You can put it up here on
24 the easel.

25 MR. HUNTER: I think we better do that

1 then.

2 MR. FREIDIN: Where should we put this so
3 Mr. Hunter can see it and the Board can see it,
4 depending on how big it is.

5 MR. HUNTER: I think it was quite a --
6 perhaps, Mr. Freidin, if Mr. Multamaki would stand
7 directly in front of it.

8 THE CHAIRMAN: If you bring it up closer
9 to the Board so we can sit and write and see it, and
10 have Mr. Multamaki move up where he can address it as
11 well, but you better turn it so that the rest of the
12 parties can also see it.

13 It is necessary for the other panel
14 members to see it?

15 MR. HUNTER: I don't believe it will be,
16 and I am presuming that this portion will be over
17 fairly quickly.

18 THE CHAIRMAN: Very well.

19 MR. HUNTER: Q. I think, Mr. Multamaki,
20 if you could identify for the Board the northern limit
21 of the Red Lake Plan.

22 MR. MULTAMAKI: A. Certainly.

23 Q. I'm sorry, the Red Lake Crown
24 Management Unit?

25 A. Yes. The Red Lake Crown Management

1 Unit is identified by the black line there.

2 (indicating) That's the northern boundary.

3 Q. And could you identify for the Board
4 the road known as Option 4 or the primary road?

5 A. Yes. That's what we call the
6 Valhalla Road. It is in red and it goes south from the
7 Nungesser Road into the top portion of the Red Lake
8 Crown.

9 Q. And that road runs from -- sorry, the
10 Nungesser Road southward into the Red Lake Crown Unit;
11 is that correct?

12 A. Yes. That option runs south from the
13 Nungesser Road into the top of the Red Lake Crown.

14 Q. Could you identify Option 2 or a
15 portion of Option 2?

16 A. Certainly. Option 2 is the green
17 option that is the furthest west and in fact crosses
18 this corner of the Berens River Crown Management Unit
19 and, again, accesses the northern part of the Red Lake
20 Crown.

21 Q. So am I correct that a portion of
22 Option 4 and Option 2 are in the Berens River
23 Management Unit; is that correct?

24 A. That's correct. Option 2 and Option
25 4, a portion of those roads cross the Berens River

1 Crown Management Unit.

2 Q. And is the Berens River Crown
3 Management Unit in the area of the undertaking?

4 A. I don't believe that it is. Perhaps
5 Mr. Bisschop can help.

6 MR. BISSCHOP: A. No.

7 Q. Thank you, Mr. Bisschop. When were
8 those options approved in the timber management plan?

9 MR. MULTAMAKI: A. The Option No. 4 was
10 the approved road corridor and it was approved in
11 conjunction with the approval of the timber management
12 plan in 1987.

13 MR. HUNTER: If I could refer you, Mr.
14 Chairman, to Exhibit 818, Volume 1.

15 Q. And, Mr. Multamaki, if you would
16 confirm that that's the plan and it was approved in
17 '87?

18 MR. MULTAMAKI: A. That's correct.

19 Q. And I notice that the approval date
20 is from April 1, '86 to March 31, 2006. So effectively
21 this plan has been backdated approximately nine months;
22 is that correct?

23 A. That's correct. That was the result
24 of Fire No. 7 and, in fact, the rewrite of the plan.

25 Q. Is that a usual practice, that the

1 plans are backwritten, or was this particular to this
2 particular plan?

3 A. It was particular to this plan
4 because of the fire situation.

5 Q. How long had you been involved in the
6 planning of the Red Lake Crown Management Unit?

7 A. The actual --

8 Q. I'm correct that you were involved?

9 A. Yes, I was. I was involved in it
10 from approximately the summer of 1985 directly related
11 to preparing the plan. However, I was the unit
12 forester on the Crown -- the Red Lake Crown Management
13 Unit from 1981 on.

14 So I guess for all intents and purposes I
15 have been involved in planning on the Red Lake Crown
16 since 1981 and actively engaged in this plan since
17 1985.

18 Q. I noticed when I asked you if that
19 unit was in the area of the undertaking you turned to
20 Mr. Bisschop. Is that a surprise to you, that the
21 Berens unit is not in the area of the undertaking?

22 A. No, no. I was reasonably sure, but
23 it's nice sometimes having the answer from...

24 Q. Someone who knows?

25 A. I wasn't going to put it like that,

1 but...

2 Q. Correct me if I am wrong, but primary
3 access roads that are to be constructed in areas
4 outside of the undertaking, which this is, are to
5 conform to the Class EA on access roads; is that
6 correct?

7 A. That's --

8 Q. Or are required to fulfill
9 requirements of that Class EA; is that correct?

10 A. On Crown management units--

11 Q. Yes.

12 A. --they are, yes. Those are the
13 requirements that have to be met.

14 Q. And this is a Crown management unit
15 is it; the Berens?

16 A. Yes, it is.

17 MR. HUNTER: I would ask you to go now to
18 Red Lake District Fisheries Management Plan which we
19 have just submitted, 907, Mr. Chairman.

20 And I am not asking Mr. Multamaki to
21 refer to this as an expert in fishery, but strictly
22 from a planning or forestry perspective.

23 MR. MULTAMAKI: Do you want me to remain
24 up here?

25 MR. HUNTER: I think it probably would be

1 best, because I want to try and just make sure that we
2 are referring to the same areas.

3 Q. And I would ask you to turn to page
4 10 of that plan and at the top it refers to 3.2,
5 Fisheries Management Zones.

6 If you would just take a very quick look
7 at that and perhaps confer with one of your colleagues,
8 I believe that those three paragraphs identify that the
9 zones will be created for the purposes of establishing
10 fishing management areas.

11 That's the only reason I am referring to
12 it. Perhaps Mr. McNicol can confirm that.

13 MR. McNICOL: A. Yes, the use of zones
14 was quite common in the district fisheries management
15 planning.

16 Q. Thank you. Then I would ask you to
17 turn to page 12 and in the right-hand column, three
18 lines down -- or three paragraphs down, there is
19 identified Zone 35, Berens River description.

20 MR. HUNTER: And I don't want to read it
21 into the record, Mr. Chairman, but I will just
22 identify - and if my friend feels it is out of context,
23 fine - it identifies that there are two Indian reserves
24 in the Berens River, there are seven commercial
25 fisheries exist in the zone, and that a portion of this

1 zone lies within the Berens River Timber Management
2 Unit.

3 Q. And I would draw your attention to the
4 last two sentences:

5 "Timber harvesting in the southeastern
6 portion of the Berens River zone could
7 occur in 1990. Roads in this portion of
8 the zone will be constructed for timber
9 extraction."

10 And could you please identify for the
11 Board, Mr. Multamaki, that area that is identified in
12 the last two sentences of that paragraph, zone 35; in
13 other words, the zone, the southeastern portion of the
14 Berens zone?

15 MR. MULTAMAKI: A. I'm not sure that the
16 Berens zone for fisheries management purposes in fact
17 match the Berens River Crown Management Unit. So I'm
18 not sure that it doesn't overlap onto the Red Lake
19 Crown Management Unit. For example, within the
20 fisheries plan, they may in fact be talking about the
21 northern part of the Red Lake Crown with respect to
22 timber harvesting.

23 The only timber harvesting operation that
24 was planned anywhere in the Berens River Crown
25 Management Unit was the cutting of the right-of-way for

1 Option No. 4. So there were no other timber harvesting
2 operations planned in the Berens River Crown Management
3 Unit and, for all intents and purposes, it was
4 inactive.

5 Q. Well, how do we reconcile that
6 evidence with the identification in the fishery -- in
7 the Red Lake District Fisheries Management Plan that:

8 "Timber harvesting in the southeastern
9 portion of Berens River...would occur in
10 1990 and roads in this portion of the
11 zone will be constructed for timber
12 extraction."

13 MR. FREIDIN: Maybe you should look at
14 the map which has the Berens River fisheries zone on it
15 and see where in fact it lines up with the two Crown
16 management units being referred to. Do you have that?

17 MR. MULTAMAKI: We don't have it up here.

18 MR. FREIDIN: It might be in the entire
19 fisheries management plan if you have that with you,
20 Mr. Hunter.

21 MR. HUNTER: Q. Just while we are
22 waiting for that, Mr. Multamaki, where would the
23 fisheries people get their information about zone 35?

24 MR. FREIDIN: In relation to timber
25 management activities or --

1 MR. HUNTER: Yes. Well, yes, in terms of
2 the:

3 "Timber harvesting in the southeastern
4 portion...could occur in 1990 and that
5 roads in this portion of the zone will be
6 constructed for timber extraction."

7 Q. Where would they have obtained that
8 information?

9 MR. MULTAMAKI: A. I would expect that
10 the timber harvesting information would have come from
11 the Timber Branch for purposes of preparing the
12 fisheries management plan.

13 Q. Would you agree with me that planning
14 for the purposes of timber harvesting was contemplated
15 in this area -- or was being contemplated in this area?
16 Was planning occurring for the purposes of harvesting
17 in the Berens management unit?

18 MR. FREIDIN: Inasmuch as we are talking
19 about -- again, are we talking about the Crown
20 management unit or are we talking about the
21 fisheries --

22 MR. HUNTER: We are talking about the
23 Crown management unit, Mr. Freidin. This area right
24 through here, which is the Berens River Management
25 Unit. (indicating)

1 MR. MULTAMAKI: Aside from --

2 MR. HUNTER: Q. Crown management unit?

3 MR. MULTAMAKI: A. Aside from Option No.
4 4, where it cross the Berens River Crown Management
5 Unit, there was absolutely no plans to harvest timber.

6 MRS. KOVEN: A point of clarification,
7 Mr. Multamaki. My understanding is that the fishery
8 management plans are supposed to take precedence over
9 the timber management plans except in the case of --
10 unless an amendment is made?

11 MR. MULTAMAKI: It's a new one to me.

12 MRS. KOVEN: I am getting confused about
13 some point then.

14 MR. McNICOL: No, Ms. Koven, I think you
15 are mistaken. It doesn't take precedence over timber
16 management plan. If there is an existing district
17 fisheries management plan, the objectives for that
18 fisheries management plan will be incorporated into or
19 looked at in the development of the timber management
20 plan.

21 MRS. KOVEN: Okay.

22 MR. McNICOL: But one doesn't take
23 precedence over the year.

24 MRS. KOVEN: And then the district
25 fishery plans are amended?

1 MR. McNICOL: The district fisheries plan
2 may be amended through the results of the actual
3 compilation of that plan with regard to its targets as
4 they flowed from DLUG, and in the meshing of the
5 district fisheries management plan with a timber
6 management plan, there may be call for amendment of the
7 district fisheries management plan.

8 But if what you are asking is: Does the
9 district fisheries management plan always have to be
10 subservient to the timber management plan or vice
11 versa, no.

12 MRS. KOVEN: All right. So in a
13 situation such as this one where at the outset of
14 developing the district fisheries management plan a
15 timber activity is known, then that's incorporated into
16 the fisheries plan?

17 MR. McNICOL: Sure, yes.

18 MR. HUNTER: Q. Is harvesting possible
19 off that road, Mr. Multamaki?

20 MR. MULTAMAKI: A. Are you talking
21 physically possible or...

22 Q. From a regulatory perspective. If
23 that primary road has been constructed - and that's a
24 question I will get to - can harvesting occur off that
25 road?

1 A. At this point in time, no, there is
2 no timber management plan prepared for the Berens River
3 Crown Management Unit. There are no licences issued,
4 no Order-in-Council timber licences issued and at this
5 point in time, from a regulation standpoint - I guess
6 that's the term you've used - it's not possible today.

7 THE CHAIRMAN: And in order for it to be
8 possible you would have to have an approved timber
9 management plan for the Berens Crown Management Unit?

10 MR. MULTAMAKI: Yes.

11 MR. HUNTER: We have the Red Lake
12 District fisheries management map. Now, Mr. Chairman,
13 I think it would be -- unless Mr. Multamaki can
14 identify it for us immediately, it would take some
15 doing. This is the map provided from fisheries and I
16 simply wanted some confirmation...

17 ---Discussion off the record

18 MR. HUNTER: We will come back during the
19 break because otherwise we will take too much time.

20 THE CHAIRMAN: Thank you.

21 MR. HUNTER: Q. In relationship to the
22 planning of that road, you have identified and agreed
23 that the Class EA on access roads would apply in this
24 instance; is that correct?

25 MR. MULTAMAKI: A. Yes.

1 Q. That is with respect to Option 4, the
2 Valhalla Road?

3 A. That's correct.

4 Q. And, in that regard, I would ask you
5 to look at the - I will show you my copy - the Class
6 Environmental Assessment for Access Roads.

7 MR. FREIDIN: Can the witness sit down
8 now?

9 MR. HUNTER: Let me just check. Yes,
10 okay. If you want to move the map.

11 Q. Perhaps -- do you have a copy of that
12 class assessment? Perhaps you could turn to page 52.

13 And I see an environmental assessment
14 checklist. And when I go down the left-hand side it
15 says: Local Commerce and Industry, at 1.2.6 trapping
16 is identified; if I go further down, Settler Areas,
17 1.4.2, Indian reserves; and then I go still further
18 down, Land Use Designations, 1.6.3, MNR Sensitive Areas
19 (vegetation, fish and wildlife, geology and landforms,
20 historical and cultural complexes).

21 With respect to the planning of that
22 primary road, would that checklist have been used to
23 identify issues or concerns?

24 MR. MULTAMAKI: A. I think this issue
25 has come up previously and I'm not sure whether that

1 checklist had been used or not. We don't have the
2 documentation on this road and -- or we were unable to
3 find it, and I'm not sure whether that checklist was in
4 fact used or not. I simply don't know.

5 Q. Okay.

6 THE CHAIRMAN: Who in the Ministry
7 physically would have been responsible for ensuring
8 that the requirements of this class environmental
9 assessment were met?

10 MR. MULTAMAKI: At the time that this
11 plan was prepared the responsibility was the District
12 Lands Branch and specifically the district planner;
13 however, that position was vacant in the Red Lake
14 District and I guess the responsibility as well was at
15 region -- with the regional planner as well.

16 MR. HUNTER: Q. Mr. Multamaki, do you
17 know whether or not -- and this is raised in the
18 context of our Interrogatory 9 and 10. We asked you I
19 believe in June -- we asked MNR in June whether or not
20 construction of the Valhalla Road began or was
21 completed, and I draw your attention to -- do you have
22 a copy of that, sir?

23 MR. GROVES: A. Mr. Hunter, I might be
24 able to more accurately answer that being the
25 supervisor there at the time.

1 Q. Okay.

2 A. And the road has not been
3 constructed. The only additional work that we have
4 done since Mr. Multamaki has written the plan is
5 prepare -- do some pre-engineering work to get an idea
6 of costs and detailed location.

7 Q. So no construction has occurred; is
8 that correct?

9 A. That's correct.

10 Q. When do you anticipate that it will
11 occur?

12 A. At the earliest, potentially next
13 year pending funding.

14 Q. You used the phrase pre-construction
15 engineering. What does that encompass; is that a
16 planning process primarily?

17 A. No, that's a detailed engineering
18 process, actual walking on the site looking for
19 potential materials which to construct with, doing
20 detailed analysis of stream crossings for potential
21 bridge or culvert installations or any engineering work
22 along those lines. Also, detailed location within the
23 corridor that Mr. Multamaki located to be the best
24 location for the road.

25 Q. As I understand it, the planning and

1 the construction of primary access roads is a timber
2 activity; is it not, or considered to be part of
3 timbering activities?

4 MR. MULTAMAKI: A. Yes. Under the -- I
5 guess the context of this plan the roads that you see
6 are timber access roads. I would like to point out
7 though that there are other roads out there that may be
8 constructed for a variety of reasons that have nothing
9 do with timber management; an example would be MTC
10 roads and so on.

11 Q. But am I incorrect in suggesting that
12 MNR is conducting timbering -- or planning timbering
13 activity in the Berens River Crown Management Unit?

14 A. Once again, only for that road
15 crossing Option No. 4. There are no plans for
16 commercial harvesting or whatever of any type, not that
17 I'm aware of anyway.

18 MR. GROVES: A. I can confirm that,
19 there are no plans and have not been any plans.

20 Q. So, therefore, the purpose of that
21 primary road is solely to provide access into the
22 northern portion of the Red Lake Crown -- Red Lake
23 management unit; is that correct?

24 It is not intended to access timber in
25 the Berens River Management Unit; is that correct?

1 MR. MULTAMAKI: A. That's exactly it.

2 MR. HUNTER: Mr. Chairman, we would like
3 to go now to the District Fisheries Management Plans.

4 MRS. KOVEN: One question, Mr. Hunter,
5 for Mr. Bisschop. I recall you telling us at some
6 point during this panel that one of the objectives in
7 constructing access roads is to really minimize the
8 number of primary roads that you need, therefore, you
9 strategically place primary roads in anticipation that
10 they will be used as widely as they possibly can be and
11 they are constructed in a 20-year time frame as opposed
12 to an immediate five-year harvesting time frame.

13 So something like this road, would there
14 be no consideration at all that it will be some day
15 used to provide access to harvesting in an entirely
16 different area that isn't planned for today?

17 MR. BISSCHOP: As I understand it, in
18 terms of the timing of its planning and the purpose for
19 which this road was put forward, there was no
20 consideration beyond the 20-year road requirements for
21 the Red Lake Crown Management Unit.

22 I think it's probably important to point
23 out that the actual decision on the location of the
24 primary road to access the area that needed to be
25 accessed on the Red Lake Crown Unit was the subject of

1 considerable planning effort that involved primarily
2 dealing with the concerns of the tourist operators
3 which ultimately lead to the decision that that
4 preferred corridor would be selected.

5 MR. HUNTER: Q. One final question. Mr.
6 Kennedy, I'm curious as to why the Berens River
7 Management Unit was not included in the 1987 amended
8 Class EA given the activities which were going on at
9 that time and obviously the approvals which were being
10 given between 1985 and '87?

11 MR. KENNEDY: A. It is simply that there
12 was no perceived need to conduct timber management
13 activities in that area in the foreseeable future and,
14 therefore, the area was excluded from the area of the
15 undertaking.

16 Q. And would that same reason apply to
17 the other Crown management units north of the present
18 area of the undertaking? I can refer to them by name
19 but I think, as you know, I believe there is a string
20 of them right across the top.

21 A. Yes, it would. The same logic
22 applies to those other management units that were in
23 place in earlier -- at an earlier time and other Crown
24 land.

25 Q. And that reason was there was no

1 perceived need to conduct - I want to use your words
2 exact - forest management activities in those areas?

3 A. I believe I said timber management
4 activities.

5 Q. Timber management activities.

6 A. Yes.

7 THE CHAIRMAN: Mr. Kennedy, in the event
8 that that position should change in the future, what
9 would happen?

10 It wouldn't be within the area of the
11 undertaking and therefore subject to the Board's
12 decision in this application; would you presumably need
13 a separate and new environmental assessment for each
14 management plan, or would you have to go perhaps to a
15 new class environmental assessment with a redefined
16 area of the undertaking?

17 MR. KENNEDY: Those I think are certainly
18 two options that could be open. I believe there is
19 another option which may be to apply for an extension
20 to the area of the undertaking -- of this undertaking.

21 MR. FREIDIN: This matter will be
22 addressed I think in Panel 17, to address that sort of
23 question. I think that will probably be the
24 appropriate place. Mr. Bisschop, will that be dealt
25 with in 17?

1 MR. BISSCHOP: Yes, in Panel 17.

2 MR. HUNTER: Q. Would you ever alter or
3 amend the boundaries of the Red Lake management unit,
4 the present boundaries; would they be amended or could
5 they be amended?

6 MR. KENNEDY: A. Yes, they could be. At
7 any time management unit boundaries may be viewed as up
8 for change as a result of combining management units or
9 altering land use patterns perhaps from some other
10 higher form of planning.

11 THE CHAIRMAN: Mr. Freidin, would it be
12 within the jurisdiction of this Board, in your opinion,
13 to confine the Board's decision to the area of the
14 undertaking as defined for the purposes of this class
15 environmental assessment?

16 MR. FREIDIN: I think the proponent will
17 be asking the Board for approval for the activities of
18 timber management to occur within the area of the
19 undertaking--

20 THE CHAIRMAN: As defined--

21 MR. FREIDIN: --as defined now.

22 THE CHAIRMAN: --today?

23 MR. FREIDIN: But I leave open for
24 further discussion and argument as to how one might go
25 about or have to go about obtaining approval for the

1 same timber management to occur in an area outside the
2 boundaries of the undertaking within which you will be
3 specifically dealing with in your decision.

4 In other words, I think you put two
5 options to Mr. Kennedy and he indicated that there may
6 be another one. It is a matter of some discussion and
7 I am not in a position to be able to advise you what
8 all the possible options might be, but they will have
9 to be canvassed in Panel 17.

10 MR. KENNEDY: We can advise you, Mr.
11 Chairman, we have addressed this in term and condition
12 No. 59 of Exhibit 700 which outlines the kind of
13 situations which may arise that would require
14 amendments to the approved undertaking and a suggested
15 procedure to follow.

16 THE CHAIRMAN: Well, this obviously is a
17 matter of some importance and the Board would expect
18 the parties, including the Ministry, will address this
19 issue fully.

20 And if you are indicating Panel 17 is the
21 place, we will be content to wait until then, but we
22 would want to see submissions of the various parties
23 concerning any such amendment procedure.

24 MR. HUNTER: I am sure you can appreciate
25 we will have some.

1 THE CHAIRMAN: I am sure you will, Mr.
2 Hunter.

3 MR. HUNTER: Q. I'm sorry to go back to
4 this, but a few comments that were made by Mr. Kennedy
5 intrigued me and I just wanted to follow up on it, and
6 a few points made by Mr. Multamaki.

7 So it is theoretically possible for you
8 to amend the physical boundary of the Red Lake Plan and
9 in theory you can amend it, for example, northwards?

10 MR. KENNEDY: A. In theory it could be
11 proposed to be amended northwards, yes.

12 Q. What point in time in a planning
13 exercise is the -- the decision-making exercise, does
14 the planning for a road effectively become planning for
15 timber management activity?

16 I'm going back to this whole question of:
17 Why do you plan for, why are you presumably going to be
18 constructing a primary road, under what stage in that
19 decision-making process does it become directly linked
20 to other timber management activities?

21 When do you say to yourself: We are
22 going to build this road because we are going to become
23 involved in timbering in any particular area?

24 A. I would say at the very early stages
25 of planning, preparation of a timber management plan.

1 Once the eligible stands have been identified is the
2 very first - sorry, those are eligible stands both for
3 harvest, renewal and maintenance - would be the very
4 first time that the planning team would begin to
5 contemplate their access needs to those stands over the
6 long term of the plan.

7 So that would be at the very -- I believe
8 that would be the very first time at which access is
9 contemplated, that would then lead to the
10 identification of primary access road corridors to
11 provide access to those groups of eligible stands.

12 Q. Mr. Multamaki, at what point in time
13 do you recall your decision was made that the northern
14 portions of the Red Lake area had sufficient stands for
15 the purposes of harvesting?

16 MR. MULTAMAKI: A. Informally we were
17 aware of those, I guess, large -- that large block of
18 eligible timber for a number of years. Obviously
19 through aerial reconnaissance, aerial photos and so on
20 we knew that there was a substantial amount of material
21 in the north part of the unit that was unaccessed.

22 Formally the first time we looked at
23 access in that block was during this timber management
24 planning process and, as Mr. Kennedy has pointed out,
25 once the eligibility maps were produced it became

1 fairly obvious that there was in fact a large amount of
2 eligible material or area in that portion of the Red
3 Lake Crown and that's when we formally started to look
4 at options for access.

5 Q. This evidence may already be in, if
6 it is I apologize, but when were those eligibility maps
7 produced; is this '85 or earlier than that?

8 A. They were produced, yes, in '85. I
9 guess one of the first jobs that the planning team
10 undertook was the production of eligibility maps.

11 Q. So if I understand Mr. Kennedy
12 correctly then, consideration of that northern road
13 would have begun at that time as well; is that correct?

14 A. After the eligibility maps had been
15 produced.

16 Q. About 1985?

17 A. Yeah, late 1985, early 1986. I'm
18 sorry, the northern option, you are talking about
19 Option No. 4?

20 Q. The Valhalla Road.

21 A. Yes. No, I'm sorry, the three
22 options, Options 2 -- 1, 2 and 3 were considered in
23 late 1985, early 1986.

24 The option that was approved, the
25 Valhalla Road, in fact was identified by the tourist

1 operators at the first information centre in February I
2 think of 1986. So that was the first time that that
3 option was approved, the Valhalla Road had even been
4 considered.

5 Q. Okay, thank you.

6 MR. HUNTER: Mr. Chairman, I would now
7 like to turn to the District Fisheries Management Plans
8 Planning Manual, which is Exhibit 908, and the
9 principal reason for doing so is to examine with MNR
10 alternative ideas for the public participation
11 consultation.

12 Q. I suppose, Mr. Bisschop, I am not
13 going to be asking any questions in relationship to
14 fisheries management, but I'm primarily concerned with
15 this document, in reviewing this document with you from
16 the point of view of environmental planning and your
17 opinions on that.

18 Perhaps either Mr. Bisschop or Mr.
19 Kennedy, I would just ask you to turn to page 2 in that
20 document at Figure 1. Can you just confirm what we
21 have heard in - I think it was in Panel 1, a long time
22 ago - that from the perspective of the Ministry there
23 is a relationship between the strategic plans and the
24 district land use plans and the fishery management
25 plans.

1 Just to refresh our memory, what is the
2 relationship between the district land use plans and
3 the fisheries management plans? I will put it another
4 way: Do the fisheries management plans implement the
5 objectives of the District Land Use Guidelines; is that
6 the nature of the relationship?

7 MR. BISSCHOP: A. I think in general
8 that's a way of expressing it, that the District Land
9 Use Guidelines provide direction and the resource
10 management plans, in this case the fisheries management
11 plans, set about resource management activities to
12 achieve that direction.

13 Q. Do you have Volume IV of the
14 transcripts available? I just simply want to refer to
15 some comments made by Mr. Douglas. I could read those
16 into the record but perhaps it will be easier if I just
17 read them. On page 561. Do you have a copy, sir?

18 A. Yes, I do.

19 Q. I draw your attention to line 5:

20 "Are there any other reasons for adopting
21 a common approach to the preparation of
22 all resource management plans?"

23 I believe Mr. Douglas responded:

24 "Yes, there are other reasons and those
25 are identified for me; one..."

1 This is in direct by Mr. Freidin. And
2 then we go down to line 13:

3 "Yes, there are a number of advantages
4 internally and externally for having a
5 common approach. We have a common
6 format, common steps in the planning
7 process it is much easier for the
8 public to understand and to follow your
9 planning, whether it is fisheries,
10 whether it is timber, whether it is
11 parks."

12 Line 21:

13 "If you start to get a common
14 understanding of how MNR approaches its
15 planning, for example, they realize that
16 there is two or three steps in which they
17 will be consulted."

18 I'm not sure who the 'they' is. I am
19 presuming it's us.

20 "They have an understanding..." and it
21 goes on.

22 Do you have any difficulty in accepting
23 the statements by Mr. Douglas with respect to the need
24 for common steps and a common format, common steps in a
25 planning process, whether you are planning fisheries or

1 timber or parks for that matter?

2 A. No, I think it makes sense,
3 particularly in terms of dealing with interested
4 publics who are involved in various resource management
5 plans.

6 Q. If you could turn over to 562, at
7 line 7 through to 12, again, Mr. Douglas:

8 "In fact, in the fisheries program - and
9 I know how I prepare my fisheries plans
10 - and the general steps, principles are
11 essentially the same for timber."

12 And do you accept that, sir, as a basis
13 for the purposes of environmental planning?

14 A. Yes.

15 Q. We go down to line 23:

16 "When you are dealing with things in the
17 same format you have same definitions,
18 you know the words mean the same from one
19 plan to the other. It certainly
20 facilitates the review and it cuts out a
21 great deal of confusion."

22 Do you accept that as well, sir?

23 A. Yes.

24 Q. Thank you.

25 MR. HUNTER: Mr. Chairman, what I propose

1 to do is go to a half a dozen provisions in the
2 fisheries management plan, district -- I'm sorry,
3 District Fisheries Management Plans, the Planning
4 Manual, and simply ask Mr. Bisschop in his opinion as a
5 planner to comment on the provisions in this plan, his
6 views on them and whether he would feel it appropriate
7 that similar provisions be incorporated into the -- I
8 am not sure, let's assume for the sake of argument
9 either the Class EA as amended or the terms and
10 conditions or the timber management manual.

11 THE CHAIRMAN: In other words, bring it
12 into the process and --

13 MR. HUNTER: Bring it into the process.

14 THE CHAIRMAN: Right.

15 MR. HUNTER: And which particular piece
16 of paper it is struck to, at this point we won't argue
17 about.

18 Q. If I could draw your attention, Mr.
19 Bisschop, to page 21, if I might. Are we together?

20 MR. BISSCHOP: A. Yes, I have it.

21 Q. Thank you. In the bottom right
22 corner, Resource Use and Projections, there is the
23 identification of the concept of key users, one which
24 is identified in the last two words in that first
25 paragraph.

1 Have you found that, Mr. Bisschop?

2 Under Resource Use and Projections in the
3 first paragraph:

4 "The following is a listing of
5 the information that should be documented
6 for such key users."

7 A. I have it.

8 Q. Okay. And then we drop down to the
9 second paragraph -- sorry, the last paragraph under
10 Current Use, and the last sentence:

11 "This section should be accompanied by a
12 map(s) of sufficient scale to clearly
13 show Indian Reserves, tourist operators,
14 and their facilities, areas fished
15 commercially for bait and for food, and
16 viewer areas."

17 To your knowledge, are there provisions
18 in the Class EA Document which contain similar
19 objectives; in other words, is there a clear statement
20 of the need to obtain information by key users?

21 A. In timber management plans there
22 certainly is information on what I would call the key
23 users of the timber resource, the historical operators
24 on the unit, information which is recorded in the
25 report of past operations.

1 There is information on other users of
2 Crown land resources, all Crown land resources within
3 the same geographical area which we portray on our
4 values maps.

5 As we have indicated extensively in our
6 evidence, much of that information is known and
7 available to MNR, and through our public consultation
8 provisions we seek additional information from
9 interested and affected parties to contribute
10 information as well on their uses and values related to
11 the same Crown resources.

12 Q. In your view, is the phrase 'key
13 users' equivalent to the phrase 'stakeholders' which
14 has been used, as I understand it, extensively in the
15 evidence of the Ministry in this hearing? Are those
16 interchangeable from your perspective; do they convey
17 the same concept?

18 A. I don't think so. The way I
19 understand the use of the word here, 'key users', it is
20 a recognition that there are a number and variety of
21 users of fish resources. In the case of timber, the
22 timber resource, the users are the forest companies,
23 the industrial operators who make use of the timber
24 resource.

25 In the way we have spoken to

1 'stakeholders', I see it as more stakeholders related
2 to all Crown land resources who have an interest in the
3 way timber management operations will be carried out
4 because of how those timber operations could affect
5 their interests.

6 So I see a difference between the
7 expression of 'key users' in this document and the way
8 we would view that word 'key users' in timber
9 management plans. Stakeholders would be all -- in
10 timber management planning anyway, all interested and
11 affected parties.

12 Q. Does that mean that stakeholders -- I
13 am having some difficulty because the explanation you
14 gave seems to suggest that native people are not users
15 of the forest or of timber.

16 In other words, if I were able to
17 demonstrate to you that native communities used timber
18 and used the forest, would they then, according to your
19 definition, become key users as distinct from
20 stakeholders?

21 A. That's how I would understand it. I
22 would expect where there is a key use of the timber
23 resource by a native group, that one could see that
24 reflected, for example, in that report of past
25 operations I spoke about where an operator would be

1 identified that was a native interest.

2 Q. As a key user?

3 A. As a key user.

4 Q. So, therefore, in your opinion, would
5 you have any difficulty if the concept of a key user
6 was introduced into the class environmental assessment
7 for the purposes of the planning process as it is used
8 and as we will see it being used in the district
9 planning manual -- in the planning manual?

10 A. I think the concept is used, I don't
11 think the name 'key user' perhaps is used. And I make
12 that point because of the tables in a timber management
13 plan that refer to operators on the unit, for example,
14 in Table 4.18.1 which is entitled: Forecast of Wood
15 Utilized.

16 Q. All right, let me stay with you
17 there.

18 A. I'm sorry.

19 Q. What page was that?

20 A. The page I have is 89 in Exhibit 7.

21 Q. 4.18.1?

22 A. Yes.

23 Q. Yes.

24 A. I look at the left-hand column which
25 here reads, consumers by licensee. I would use that

1 term 'consumers' to be the equivalent of what is
2 referred to as 'key users' in the fisheries plan.

3 Q. So, in other words, in your opinion
4 you have no difficulty with the idea that would say
5 consumer(consumers) - I am trying to think of an
6 appropriate analogy - by need for fuel wood or need for
7 saw logs. In other words, in your opinion you have no
8 difficulty with establishing particular uses of timber
9 with respect to native communities as consumers or
10 users, whichever word...

11 A. I have no difficulty with that.

12 Q. Thank you. Sorry, we got bogged
13 down, Mr. Bisschop. I am just trying to--

14 A. Words.

15 Q. --develop that one to go to what is I
16 think the real concern which is on page 24 and the area
17 that is of interest to me which is found on page 24 of
18 the manual and identify for you, for native people
19 which in the context of -- and just so there is no
20 ambiguity, they are identified as a key user.

21 In other words, I think that's why I
22 pointed you -- principally pointed you to page 21 which
23 introduces the material for that section and then go to
24 native people. I am following my flow chart.

25 And the first question is: Is there any

1 comparable wording in the class assessment with respect
2 to use? Imagine that you are simply imposing into that
3 section different words: Give the history of the
4 native timbering activities, if possible, and native
5 utilization of the resource.

6 Correct me if I am wrong, and subject to
7 check, I don't believe that there is.

8 A. No, there is no such wording in
9 either the Class EA or TPM.

10 Q. I am intrigued - and perhaps you are
11 not the best person to answer this, Mr. Bisschop, but
12 you are the principal witness in terms of planning - I
13 am intrigued that the fishery manual would identify
14 native and native constituency and native use as a key
15 use in this document but that similar provisions are
16 not found in the timber management plan. I guess the
17 basic question is why that difference?

18 A. My understanding - and I am certainly
19 not an expert in this area - is that in fisheries
20 management plans this is a recognition of the
21 traditional use -- the historical and traditional use
22 of the fisheries resource by native peoples and, in
23 that sense, is somewhat different for the fisheries
24 resource than for the timber resource.

25 I'm not aware of any - and, again, I am

1 probably beyond my realm here - of any use of timber
2 that, for example, is recognized in treaty rights or
3 whatever.

4 Q. Well, I don't want to get involved in
5 that debate again. We have gone around that several
6 times and I won't get into it.

7 In your opinion, would you have any
8 difficulty - and I am speaking here in general terms,
9 if you are comfortable responding to it, fine - but
10 would you have any difficulty with a similar provision
11 in the Class EA Document which identified native people
12 as a key user and identified such native uses of the
13 forest as fuel and saw logs for the purposes of those
14 similar to those found in that particular section of
15 the fisheries manual in which I attempted:

16 "To give the history of the native timber
17 use, if possible, and the native
18 utilization of this resource, areas
19 traditionally providing for native use of
20 timber should be mapped."

21 Do you have any objection to phrases
22 similar to those found on 24 being inserted into the
23 Class EA, in your opinion?

24 A. Whether the Class EA is the place to
25 do it or not is immaterial I guess. I would have no

1 difficulty with a timber management plan produced
2 according to the process providing some text and
3 description of the use of a timber resource by native
4 interests, and I think I have indicated that there will
5 be situations in individual plans where there is
6 documentation of that, for example, in tables related
7 to the report of past forest operations.

8 THE CHAIRMAN: Mr. Hunter --

9 MR. HUNTER: Q. The --

10 THE CHAIRMAN: Sorry. Mr. Hunter, is the
11 use of the timber by native communities for saw logs,
12 is that for their own consumption?

13 MR. HUNTER: It varies. Their own
14 consumption, there are small saw mills, there are
15 agreements being negotiated under third party
16 agreements in some areas.

17 I don't think -- I think the best you can
18 say is at this point in time it is not a very defined
19 systematic. There is no piece of paper out there you
20 can look at and say: Here is how native communities
21 access timber or get involved. There are very -- in
22 terms of my experience, there are very different ways
23 in which it is done.

24 MR. FREIDIN: You always need a licence
25 to cut, notwithstanding.

1 THE CHAIRMAN: Thank you.

2 MR. HUNTER: There are formal and
3 informal systems, but perhaps it is one of the best
4 ways from my experience, and I could be wrong.

5 MR. KENNEDY: Mr. Hunter, if I can draw
6 your attention to one item, the discussion in the
7 fisheries management planning manual is talking about
8 current use of the resource and is recording the rate
9 of use of the fishery resource.

10 There is a similar item in the Timber
11 Management Planning Manual in the series of tables that
12 form the report of past forest operations where current
13 licensees are listed in the tables as outlined by Mr.
14 Bisschop. So there is a similarity in listing the kind
15 of current use that is occurring by any operator; just
16 as there is in a fisheries plan, the same items are
17 found in the timber plan.

18 MR. HUNTER: I am speaking I think, Mr.
19 Kennedy, in much broader terms than operators at this
20 point in time.

21 ---Discussion off the record

22 MR. HUNTER: Q. Page 28, Mr. Bisschop.
23 On the right-hand side, in the third full paragraph, it
24 is in bold type:

25 "Any significant departure from the

1 District Land Use Guideline targets will
2 require an explanation in the management
3 plan."

4 MR. FREIDIN: What page, I'm sorry?

5 MR. HUNTER: I'm sorry, page 28.

6 Q. Is there a comparable provision,
7 perhaps Mr. Kennedy or Mr. Bisschop - I am referring
8 now specifically to the Class EA - is there a
9 comparable provision in the Class EA to that provision?

10 MR. KENNEDY: A. I don't believe the
11 words are the same, but certainly the intent is
12 expressed.

13 Q. Where would I find that, sir?

14 A. If I could just have a moment. It is
15 found in Exhibit 7, the Timber Management Planning
16 Manual at page 59, which is one of the pages that has
17 been revised, it is dated February the 15th, 1988 where
18 there is a discussion of the --

19 MR. FREIDIN: Just hold on one second
20 until we all find it.

21 MR. KENNEDY: I was indicating that in
22 Exhibit 7, the Timber Management Planning Manual, on
23 page 59, has the reference to using the District Land
24 Use Guidelines.

25 MR. HUNTER: Q. Correct me if I am

1 wrong, Mr. Kennedy, but I don't see a provision in 4.8
2 which says that if there is a significant departure
3 from the guidelines an explanation would be required
4 and would require a revision to the District Land Use
5 Guidelines.

6 MR. KENNEDY: A. You are correct in that
7 it does not state that in that section, no.

8 Q. Mr. Bisschop, in your opinion, would
9 you object to introduction of such a provision into the
10 Class EA - and I refer to the Class EA at this point as
11 a document I think we have already discussed that issue
12 with the Chair - firstly...

13 THE CHAIRMAN: Are you contemplating your
14 answer, Mr. Bisschop?

15 MR. FREIDIN: I don't think there is a
16 question.

17 MR. BISSCHOP: I'm sorry, I didn't hear
18 the full question.

19 MR. FREIDIN: He said firstly. I thought
20 he was going to say something else.

21 THE CHAIRMAN: Do you want to repeat your
22 question, Mr. Hunter?

23 MR. HUNTER: Q. Mr. Bisschop, in your
24 opinion, do you have any objection to the insertion of
25 a clause similar to that in the Class EA?

1 MR. FLEET: A. Mr. Hunter, there is a
2 statement in the Timber Management Planning Manual that
3 approaches what is in the fisheries manual on page 5,
4 that's Exhibit 7.

5 Q. Yes. And could you identify the line
6 or the paragraph for us?

7 A. Yes. Under 2.2, Objective
8 Establishment, the second full paragraph, the final
9 line:

10 "The harvest and renewal targets
11 established in the timber management plan
12 can be used to refine or confirm DLUG
13 targets."

14 Q. Sorry, you will have to help me
15 again. I am looking under 2.2, is it in the first
16 paragraph?

17 A. In the second full paragraph.

18 Q. District Land Use Guidelines--

19 A. Yes.

20 Q. --generally?

21 A. The final sentence of that paragraph
22 beginning with:

23 "The harvest..."

24 MR. HUNTER: I'm sorry, I'm looking at
25 page 5, perhaps Mr. Freidin can help me. Is this the

1 TPPM?

2 THE CHAIRMAN: Second paragraph under

3 2.2.

4 MR. HUNTER: The Class EA?

5 MR. FREIDIN: No, no. No, no, the TPM.

6 MR. FLEET: Mr. Hunter, you should be
7 looking at a black and blue page.

8 MR. HUNTER: Okay.

9 MR. FREIDIN: The third last paragraph,
10 Mr. Fleet?

11 MR. FLEET: Yes.

12 MR. HUNTER: Q. I'm afraid I can't agree
13 with you that that says that the District Land Use
14 Guidelines will be amended if there is a significant
15 departure from such guidelines.

16 You may be reading it differently than I
17 am, sir, but I don't see that that sentence says it as
18 clearly as what is said in the district manual.

19 MR. FLEET: A. Not quite as clearly,
20 sir, but it does provide an element of direction.

21 THE CHAIRMAN: Going back to Mr.
22 Bisschop. Could we have an answer to Mr. Hunter's
23 original question, Mr. Bisschop, from your perspective,
24 please?

25 MR. BISSCHOP: My hesitation on it, Mr.

1 Chairman, was that I had anticipated I guess that Mr.
2 Hunter's question was going to have two parts because
3 of the way I read this sentence as well.

4 MR. HUNTER: Q. It will have two parts,
5 but I am trying to deal with the principal amendment
6 specifically. I'm not trying to --

7 MR. BISSCHOP: A. Mm-hmm.

8 Q. The specific points obviously are the
9 ones that are of concern to us in the fisheries manual
10 and the moose manual.

11 MR. FREIDIN: Moose guidelines.

12 MR. HUNTER: Moose guidelines.

13 MR. FREIDIN: Fish guidelines.

14 MR. HUNTER: And the fish guidelines.

15 MR. BISSCHOP: Again, without getting
16 into the details of the direction that DLUG provides to
17 timber management planning in terms of targets, we have
18 indicated that the targets for the timber management
19 plan are developed within the timber management plan
20 and the statement that Mr. Fleet referred to in the
21 Timber Management Planning Manual goes further in terms
22 of the development of those targets and plans can be
23 used to refine or confirm DLUG targets.

24 On the second part of the statement in
25 the fisheries planning guidelines, dealing with:

1 "would require a revision to the District Land Use
2 Guidelines", I could accept that a statement that
3 provides that direction, that where necessary the plans
4 say something about whatever revision might be required
5 to a DLUG, could be expressed in the process.

6 MR. HUNTER: Mr. Chairman, I could pursue
7 this. I think what I am -- my objective today is to
8 really try and get a sense of the range of areas where
9 we can respond to the terms and the conditions and if
10 there are disagreements let's know about them and we
11 don't have to - I don't hope that I can persuade Mr.
12 Bisschop or MNR one way or the other in certain areas,
13 and that's fine, that's your decision at the end of the
14 day which way you want to go.

15 THE CHAIRMAN: And I take it at some
16 point --

17 MR. HUNTER: I'm rather interested in the
18 range and you are just simply responding and come back
19 with specifics on it.

20 THE CHAIRMAN: Well, at some point you
21 are going to submit your own conditions--

22 MR. HUNTER: Absolutely.

23 THE CHAIRMAN: --which will contain the
24 precise wording that you would like to see
25 incorporated; is that correct?

1 MR. HUNTER: Yes, sir.

2 THE CHAIRMAN: Thank you.

3 MR. HUNTER: But just so Mr. Freidin is
4 aware of what the objectives are and the Board is
5 aware, then we can declare the areas where there is no
6 room, but let's know about that, if there are areas
7 where -- I am not suggesting that MNR per se would
8 accept what Mr. Bisschop is putting in evidence, I am
9 asking his opinion and we will proceed from there.

10 THE CHAIRMAN: Is the Board correct in
11 assuming - just to clarify your objectives in this
12 cross-examination - is the Board correct in assuming
13 that where a party has elicited an agreement in effect
14 from the Ministry as to the fact that there would be no
15 objection to a change or an addition or amendment to
16 the class environmental assessment and/or supporting
17 documents, that nevertheless those changes will be set
18 out precisely in terms of suggested terms and
19 conditions put forward by the party suggesting the
20 change?

21 MR. HUNTER: That's correct.

22 THE CHAIRMAN: We are not just taking
23 that because there is agreement on a particular term
24 that is the last we hear of it and we would be
25 searching through at the end of the day through the

1 evidence to find out what in fact has been agreed upon?

2 MR. HUNTER: No, sir, because if that
3 were the situation, then I would be here for the next
4 ten days going through each of these areas word by
5 word, and I don't think you want to do that.

6 THE CHAIRMAN: No, but we will have it
7 before us at some point as to precisely the changes
8 which (a) are requested and, (b) have received the
9 agreement, if such is the case, by at least the
10 Ministry in terms of what they are prepared to accept.

11 Now, it may be that some other party is
12 not prepared to accept the same amendment or suggested
13 amendment.

14 MR. HUNTER: If we could be that hopeful
15 in terms of the process, then I would say yes. But
16 just so that there is no misunderstanding, my intention
17 is that on the basis of the responses from the Ministry
18 today - and at the best, I can anticipate general areas
19 of agreement or disagreement - we would prepare for you
20 terms and conditions.

21 THE CHAIRMAN: Well, the reason --

22 MR. HUNTER: But I am not presuming that
23 the Ministry would accept.

24 THE CHAIRMAN: No, but the reason I am
25 sort of trying to clarify this at this point--

1 MR. HUNTER: Yes, sir.

2 THE CHAIRMAN: --is because, if the Board
3 in its procedural directives which it's in the process
4 of preparing--

5 MR. HUNTER: Right.

6 THE CHAIRMAN: --contemplates adopting
7 the negotiating process that was discussed on October
8 17th or a facsimile thereof, if I might put it that
9 way, then that presumably would be one of the
10 mechanisms at which this agreement or lack of agreement
11 would be set out; is that not the case, at the end of
12 this negotiating process?

13 It would define where the parties agree
14 who have taken part in the negotiation process, it
15 would define specifically the terms and conditions upon
16 which agreement is reached because the terms and
17 conditions from all parties will be on the table, and
18 it will define presumably the areas of disagreement as
19 well?

20 MR. HUNTER: I have no difficulty with
21 that and that is the end of the process. What I --

22 THE CHAIRMAN: No, that is the
23 negotiating process which might take place in February
24 and with a report submitted to the Board subsequently
25 as to the results of that negotiating process and at

1 least at that point in time everyone will be cognizant,
2 if I might put it that way, as to what issues have been
3 agreed upon and what issues remain in dispute to be
4 dealt with specifically by the various parties in the
5 presentation of their own case in terms of presenting
6 oral evidence to try to persuade the Board to adopt
7 their position.

8 In other words, the areas upon which
9 there is agreement are some of the areas that the Board
10 is, in effect, requesting be taken off the table in
11 terms of presenting oral evidence; they are not off the
12 table in terms of the Board's decision, they are very
13 much a part of the evidence and a part of an agreed
14 position, if that is the case.

15 MR. HUNTER: Yes. I have absolutely no
16 difficulty with that at all.

17 THE CHAIRMAN: Okay.

18 MR. HUNTER: I was trying to -- the
19 concern that arose in terms of my comments was: I
20 would hope that when we present the initial document
21 that we will have a list of the terms and the
22 conditions which we are seeking, we will have our
23 understanding of the Ministry's response - not
24 presuming that they agree or disagree - but yet trying
25 to lay out in a comprehensive form where we think there

1 are areas of agreement and where we think there are
2 areas of disagreement and then proceed from there.

3 THE CHAIRMAN: Well, you may even go
4 further than that, you may have by that point in time,
5 as you are ascertaining from this particular
6 cross-examination, some areas of perhaps agreement that
7 can then be put in more specific wording in terms of
8 your own suggested terms and conditions.

9 MR. HUNTER: Exactly.

10 THE CHAIRMAN: Not just ones that you are
11 hoping they will agree to, maybe you will find after
12 reviewing your questions and the evidence that they
13 have in fact signified agreement.

14 MR. FREIDIN: I think Mr. Hunter will
15 come there and he will have a draft term and condition
16 that says thus and so, and he'll say: Well, obviously
17 you are going to agree to that, here's what Mr.
18 Bisschop said, here's what so-and-so said, that is
19 agreed.

20 THE CHAIRMAN: That's right.

21 MR. FREIDIN: And I am sure that is what
22 will happen. Other people may have comments on that,
23 but that is how it's going to work.

24 THE CHAIRMAN: Because to the extent that
25 the parties are aware that there is no objection from

1 those opposed in interest, then the specific wording of
2 those conditions should be specified right up front,
3 like, right in the initial submission of the terms and
4 conditions and not necessarily have to wait further
5 negotiation.

6 MR. HUNTER: From our perspective they
7 will be.

8 THE CHAIRMAN: Okay.

9 MR. HUNTER: Q. I am going to have to go
10 back because I don't recall. Perhaps you could give
11 your answer, it's two-fold, Mr. Bisschop, and relates
12 specifically:

13 "And will require an explanation in the
14 management plan and would require a
15 revision to the District Land Use
16 Guidelines."

17 In principle, would you consider the
18 incorporation of that provision into the Class EA and
19 which would specify that:

20 "And that would require revision to the
21 District Land Use Guidelines and any
22 departure from either the fisheries
23 management manual or the moose management
24 manual..."

25 I'm separating the two issues here.

1 MR. FREIDIN: Well, I think he said any
2 significant departure. Do you want the same words,
3 are you suggesting the same words?

4 MR. HUNTER: Yes, yes.

5 MR. BISSCHOP: I will try again.

6 MR. HUNTER: Q. I wasn't clear. Let me
7 try it again:

8 "Any significant departure from..."

9 THE CHAIRMAN: No, just a second. I
10 think Mr. Bisschop is going to try again.

11 MR. BISSCHOP: I think the substance of
12 my answer was that if there were anything in a timber
13 management plan that required a revision to a district
14 land use guideline, that I could accept that that
15 requirement should be explained in the planning process
16 so that it's clear that that direction exists.

17 THE CHAIRMAN: But does that go further
18 to say that the District Land Use Guidelines would then
19 be amended accordingly?

20 MR. BISSCHOP: That is what I would see
21 as the explanation in that direction, Mr. Chairman,
22 that where a timber management plan alters the district
23 land use guideline, there would be provisions in the
24 statement in the process that required that the
25 district land use guideline be amended.

1 MR. HUNTER: Q. Let me carry it one step
2 further. The phrasing would be, in general terms:

3 "Any significant departure from the
4 fisheries management guideline or the
5 moose management guideline would
6 require...."

7 MR. FREIDIN: That is --

8 MR. HUNTER: It's a separate question,
9 the answer can be yes or no.

10 Q. "...would require a revision to those
11 guidelines."

12 In other words, where the timber
13 management plan required a significant departure from
14 the fisheries guideline or from the moose
15 guideline; first, it would be noted, documented?

16 MR. BISSCHOP: A. Excuse me. When you
17 use the word 'guideline' there, do you mean plan, the
18 fisheries plan for the district?

19 Q. No, the provincial guidelines.

20 A. You mean the provincial --

21 THE CHAIRMAN: The Fish Habitat
22 Guidelines?

23 MR. HUNTER: Q. I am sorry, the
24 Provincial Guidelines for the Protection of Fish
25 Habitat.

1 MR. BISSCHOP: A. Okay.

2 Q. Okay.

3 A. My apologies, the word guidelines
4 confuses me as much as anyone.

5 Q. When I refer to the guidelines, those
6 are the ones, the provincial guidelines.

7 A. Okay. Now, that I understand, could
8 you please ask the question again.

9 Q. Okay. Any significant -- would you
10 agree to a clause in the Class EA which would follow
11 the outline on page 28 in the Fisheries Planning Manual
12 that would say:

13 "Any significant departure from the
14 provincial fisheries guideline for fish
15 habitat and the provincial guidelines for
16 moose habitat will require an explanation
17 in the management plan (i.e., the timber
18 management plan) and would require a
19 revision to those guidelines."

20 So there is two parts to the question;
21 one is documentation, the other is revision to those
22 provincial guidelines.

23 THE CHAIRMAN: Mr. Hunter, why would you
24 have a revision to the provincial guidelines which may
25 be affected by a particular timber management plan?

1 Are not the guidelines, provincial in scope, meant to
2 apply to the entire province and, should there be a
3 deviation from those guidelines, we have seen that
4 there is various reporting mechanisms on up the
5 management structure, but if you changed or amended the
6 provincial guidelines because of a requirement of a
7 particular timber management plan, what about those
8 guidelines in their original form vis-a-vis the rest of
9 the province not covered by that timber management
10 plan?

11 MR. HUNTER: Fair comment. Thank you. I
12 will take off the last part and then go simply to the
13 first part.

14 Q. That is:

15 "...would require explanation in the
16 management plan."

17 Do you see the first part of the
18 sentence?

19 MR. BISSCHOP: A. I understand.

20 Q. Okay.

21 A. I had the same difficulty with the
22 second part. Term and condition No. 20 -- draft term
23 and condition No. 20 specifically addresses this
24 subject for the fish habitat guidelines.

25 Q. Do you want to deal with it when we

1 get to that portion then?

2 A. I am prepared to deal with it now.

3 Q. Okay.

4 A. And that term and condition requires
5 specifically what I would call a deviation related to
6 the fish habitat guidelines.

7 If we have a proposed prescription that
8 deviates from the direction in those guidelines, it
9 must be identified in the plan, the rationale must be
10 presented publicly at the information centre and be
11 documented in the supplementary documentation that
12 accompanies the plan.

13 On the subject of the same sort of
14 deviation in a timber management plan related to moose,
15 as you are well aware, there was considerable
16 discussion at the hearings - and perhaps Mr. McNicol is
17 best to explain - that there is -- my understanding is
18 there is documentation requirement in a plan that --

19 Q. Obviously -- Mr. McNicol, I am sorry,
20 go ahead. When you say 'in the plan', but as I
21 understand the pieces of paper that I have in front of
22 me there is no requirement for that; am I incorrect in
23 that? In other words, there is no comparable provision
24 under 20?

25 A. There is not a draft term and

1 condition. I think Mr. McNicol best explained the
2 relationship to the interim direction on the moose
3 habitat guidelines.

4 MR. McNICOL: A. I think, Mr. Hunter,
5 you are aware of the interim direction and the
6 necessity--

7 Q. I am.

8 A. --and the necessity for the
9 documentation of clearcuts that exceed 260 hectares
10 within the plan.

11 Q. You are going to have to help me.

12 THE CHAIRMAN: Well, Mr. McNicol, rather
13 than going over that considerable amount of evidence,
14 could you refer Mr. Hunter to the particular area in
15 the transcript? Perhaps you could locate it over the
16 break where that was set out in full.

17 Mr. Hunter, there was a rather extensive
18 discussion one day when you were not present and if you
19 had an opportunity to review the transcript that Mr.
20 McNicol will refer you to I think --

21 MR. HUNTER: Okay. I won't get into it
22 now, I won't take too much time on it.

23 THE CHAIRMAN: Could we also find a
24 convenient spot for a morning break?

25 MR. HUNTER: Okay. All right. There is

1 going to be another 15 or 20 minutes on this section
2 before I get into the terms and conditions.

3 THE CHAIRMAN: Okay. We will take a
4 20-minute break at this time.

5 Thank you.

6 ---Recess taken at 10:20 a.m.

7 ---On resuming at 10:50 a.m.

8 THE CHAIRMAN: Thank you. Be seated,
9 please.

10 Mr. Hunter?

11 MR. HUNTER: Thank you, Mr. Chairman.

12 Q. Mr. Bisschop -- oh, Mr. McNicol,
13 could you please identify for us the transcript and the
14 pages and the discussion on moose guidelines?

15 MR. FREIDIN: I can do that for you.
16 There were a number of locations in relation to the
17 interim direction. Volume 138 commencing at page 23511
18 is where the direct evidence commenced.

19 There was evidence just the other day in
20 Volume 150 commencing at page 25876. I think that was
21 during the cross-examination of Mr. Edwards in which
22 Mr. McNicol went through the 60/40 language of that
23 interim direction and indicated the effect of clearcuts
24 exceeding 260 hectares.

25 MR. McNICOL: I think, Mr. Freidin, it

1 was cross-examination by Mr. Hanna not Mr. Edwards.

2 MR. FREIDIN: Or Mr. Hanna.

3 MR. HUNTER: Thank you.

4 Q. Mr. Bisschop, if I could ask you to
5 refer to the Fisheries Planning Manual at the bottom of
6 page 28 and in the left-hand column of page 29, and
7 then perhaps both you and Mr. Kennedy could look at
8 page 60 of the Timber Management Planning Manual.

9 I will do that again, Mr. Chairman. The
10 District Fisheries Planning Manual at item identified,
11 Issues and Problems, which is at the bottom of 28 and
12 over to 29, and then in the Timber Management Planning
13 Manual at page 60 at Item 4.8.2, Problems and Issues.
14 Okay?

15 MR. BISSCHOP: A. Yes, I have them.

16 Q. Now, my first question is - and
17 perhaps both of you - is the documentation at 4.8.2 at
18 page 60, the equivalent in terms of subject matter or
19 substance to that which is found in the fisheries
20 manual under the same heading of Issues and Problems?

21 In other words, are they intended to
22 cover off the same subject matter?

23 A. The same subject matter in the sense
24 that they are issues and problems which the plan for
25 that particular resource can address. In other words,

1 for timber management plans, they are issues and
2 problems that can be addressed by the proposed
3 strategies and activities that will be put forward in
4 the timber management plan. Similarly, in the case of
5 fisheries management plans, issues and problems that
6 can be addressed by the proposed strategies and
7 activities related to fisheries management.

8 Q. Now, if we could go to the
9 documentation in the Fisheries Management Manual, Mr.
10 Bisschop, would you agree with me that from a
11 substantive point of view that the issues that are
12 addressed, the concerns that appear to me to be
13 addressed in the district management manual are not
14 comparable to those identified in the timber management
15 manual by way of emphasis and by way of substance.

16 For example, it is clearly identified in
17 the district management manual who the parties are;
18 i.e., users, key users and/or the fishery manager.

19 A. Yes, there is more specific
20 explanation in the fisheries planning manual than you
21 see on page 60 of the Timber Management Planning
22 Manual.

23 Q. My question then is: Would you, in
24 your opinion, object to the provisions found in the
25 district management manual, as a question of principle,

1 being incorporated into the timber management manual?

2 MR. FREIDIN: We are talking now about
3 those portions under Issues and Problems?

4 MR. HUNTER: That's correct, sir, from --
5 Mr. Chairman, I don't really wish to read all of those
6 into the record.

7 THE CHAIRMAN: I don't think they are
8 necessary.

9 MR. HUNTER: In order that I be clear, I
10 am principally concerned about those that are
11 identified -- the text which is found under 4: Issues
12 and Problems, through to the left-hand column.

13 I am not talking about the right-hand
14 column or the pages which follow, but specifically
15 about the philosophy, the basic information to be
16 documented, and the emphasis which is found at the
17 bottom of the page.

18 THE CHAIRMAN: Essentially Section 4?

19 MR. HUNTER: That's correct.

20 MR. BISSCHOP: As I understand your
21 question, it's as simple as: Should there be more
22 substantive direction provided on how that subject of
23 problems and issues should be addressed in timber
24 management plans in either the Class EA or the TMPM?

25 MR. HUNTER: Q. In part, Mr. Bisschop,

1 and it is also the incorporation of what I am referring
2 to generally as the philosophy. So basically I am
3 saying: Do you have any difficulties with the
4 incorporation into the -- I am going to use the phrase
5 Class EA.

6 MR. BISSCHOP: A. Mm-hmm.

7 Q. And we understand that that may be
8 into the Class EA or the timber management document?

9 A. Right.

10 Q. With wordings that are similar to
11 those found in paragraph 4, Issues and Problems. And
12 if you have disagreements or concerns, then please say
13 so. I am not...

14 A. Again, I don't generally have
15 difficulty with providing more direction on what is
16 meant to be addressed. I would indicate that through,
17 if I could refer to draft term and condition No. 18 --

18 Q. And please bear with me. Yes?

19 A. Which in effect summarizes pages 167
20 and 168 of the Class EA Document, Exhibit 4.

21 Q. Yes?

22 A. You will see Item (b), 18(b) which --

23 Q. I presume:

24 "A summary of the major issues
25 encountered and addressed in the

1 plan..."

2 Is that correct?

3 A. That's right.

4 Q. Yes.

5 A. Which is a new requirement that you
6 won't see in the Class EA version of this. The last
7 sentence of the paragraph at the end of term and
8 condition 18 speaks to this further as well in terms of
9 making that summary publicly available.

10 My point is that although the
11 comprehensive direction in the planning document is
12 perhaps not there, at least in terms of the same degree
13 of explanation that is in the fisheries manual, the
14 intent is that a product is produced in a plan and
15 provided in supplementary documentation and available
16 for public distribution that addresses this subject
17 area.

18 Q. Just so in order that I have no
19 difficulties with that then, when we propose terms and
20 conditions to the Ministry that this would be the
21 appropriate place for us to deal with the issues
22 identified under Issues and Problems; and, as I
23 understand you, you have no difficulties with the
24 specificity which is outlined in paragraph 4. If I
25 have mistaken your views, then say so.

1 A. I should qualify that by saying I am
2 not -- I just read through the provisions there.

3 Q. Right.

4 A. I see them generally as providing
5 more explicit direction on how to approach this
6 subject. I have no problem with the idea of providing
7 more explicit direction.

8 Q. Mr. Kennedy, I would like to draw
9 your attention to 4.8.2 and in that paragraph I am
10 trying to understand in the second paragraph the
11 phrase:

12 "The problems and issues identified
13 should be those which can be addressed in
14 the timber management plan and which will
15 impact on strategy or result in actions."

16 I can understand that. The next sentence
17 I don't understand:

18 "Those of an administrative nature which
19 cannot be addressed by planned actions
20 should not be identified."

21 Does that say that one ought not to
22 identify administrative problems, or that if it is an
23 administrative problem it will not be identified? I
24 don't understand the syntax of that sentence. Can you
25 help me with that?

1 MR. KENNEDY: A. The intention there is
2 to indicate that it's not appropriate to be recording
3 things that cannot be addressed in a timber management
4 plan directly.

5 So, for instance, if -- a hypothetical
6 being if someone wanted more staff to conduct
7 operations, more money, more equipment, that it
8 wouldn't be appropriate to include those kinds of
9 things under a problem and issues section in the plan.
10 However, it might -- it would be appropriate to
11 indicate the kind of effects that those items may have
12 on achieving the program as laid out in the timber
13 management plan.

14 Q. You have given us -- without getting
15 into an extensive discussion about it, the example that
16 you have given completely exemplifies the concern that
17 I have.

18 If by virtue of the fact that you do not
19 have sufficient staff and, therefore, it is arguable
20 that you cannot meet the objectives of the plan on the
21 one hand - and it seems to me that that kind of a
22 discussion or concern should be raised - but, as I
23 understand it, you may have categorized that as an
24 administrative concern. Now, I am not sure how you get
25 out of that loop.

1 A. It certainly is a loop, I will agree
2 with you there. What we are saying --

3 Q. How do we get out of it?

4 A. By identifying that what kind of
5 actions that will be undertaken with what resources are
6 available and by indicating that if there are
7 outstanding actions that can't be achieved --

8 Q. But then I can't say that you have
9 got a staffing problem. Do you see the difficulty that
10 I am having?

11 If I come to you -- assume for the sake
12 of argument that you say we are going to become
13 involved in the translation of documents into
14 Oji-Cree--

15 A. Mm-hmm.

16 Q. --and that is going to become part of
17 the process, then I go through your plan and you say
18 that, and then I turn and I say but there is nothing in
19 here providing for how that is to be done. How do I
20 deal with that issue, or are you excluding that issue
21 by virtue of that sentence?

22 A. I don't think I would -- or I would
23 not expect to see that as a problem put forward in a
24 draft plan. I expect to see that kind of an item dealt
25 with through the administrative hierarchy within

1 Natural Resources and...

2 Q. Perhaps I have chosen a poor example.

3 I am trying to think of one that would be more
4 appropriate and I am having some difficulty. But for
5 the sake of -- if we keep it at the general level, if
6 the plan identifies that you are going to do A, B and C
7 and you don't have the resources to do that, does that
8 phrase preclude -- "preclude one from raising that
9 issue as an issue or a problem"?

10 A. No, it would not. Something such as
11 that would be expected to be shown as what the impact
12 or the lack of those resources would have on achieving
13 the objectives in the plan.

14 Q. Okay. Then what would be something
15 of an administrative nature, in your view, that ought
16 not to be addressed? Are you referring to the type of
17 example I have just given you which is, for example,
18 translation services and the provision of services in
19 Cree?

20 A. I think that would be a fair example,
21 that it wouldn't -- that problem, if it existed, would
22 not be particular to a single management plan, it would
23 need to be addressed on a scale much broader than a
24 single plan.

25 Q. Oh. So, therefore, one of the

1 criteria as to whether it's administrative, if I
2 understand you, is that it cuts across the board; that
3 is, it's something that could affect all plans as
4 distinct from --

5 A. That may well be characterizing some
6 of the kinds of the administrative problems that would
7 arise, yes.

8 Q. Would those matters of an
9 administrative nature be, to a large degree, issues
10 that this Board is going to have to deal with in terms
11 of generic planning process issues for - I am not sure
12 if the Board would accept it - but, for example, the
13 provision of materials in native languages; is that
14 what is contemplated as administrative in nature?

15 A. No, I would say -- I would say not.

16 Q. They are not the issues that this
17 Board is dealing with?

18 THE CHAIRMAN: We would be interested in
19 the answer to that last question.

20 MR. KENNEDY: Okay.

21 THE CHAIRMAN: You are saying that that
22 is not an issue that you expect the Board to be dealing
23 with?

24 MR. KENNEDY: Could I have the question
25 repeated, please?

1 MR. HUNTER: Q. I used the example of
2 the provision of materials in native language as
3 something that might be identified in the timber
4 management plan. You said no.

5 MR. KENNEDY: A. I do not think that
6 would be something that would show up in timber
7 management plan.

8 Q. Would not show up?

9 A. Would not show up.

10 Q. That's right. And it would be
11 something which would be general, it would be something
12 that would be dealt with through the Ministry. And if
13 I recall, you then said it will be something which
14 would be general application.

15 I then said: Oh, would that not then be
16 a matter -- would that not be a type of a matter that
17 this Board would be dealing with; i.e; it's an
18 administrative matter, as you would define it, but
19 certainly we are going to ask as terms and conditions
20 that materials be provided in Oji-Cree - let me finish,
21 Mr. Freidin - and then I said: Oh, isn't that a matter
22 which this Board, that type of a matter, would be
23 dealing with.

24 And I then said: Are those
25 administrative matters those types of matters which the

1 Board will be giving its approval to in this hearing?

2 Now, if I have misstated it, Mr.

3 Chairman, I'm sure you'll --

4 MR. FREIDIN: I think that the clear fact
5 is that the Ministry itself has proposed that the Board
6 impose a term and condition in relation to that, so
7 obviously we felt it's an appropriate matter for the
8 Board to deal with.

9 The witness has just indicated that if in
10 fact a problem arose in relation to meeting such a
11 requirement, it's not something which is dealt with
12 within the timber management plan, it would have to be
13 dealt with somewhere else. It's just not an
14 appropriate matter to be in a timber management plan,
15 that is all.

16 THE CHAIRMAN: Well, is it not the case
17 that as part of the Board's mandate in this hearing it
18 could well amend or suggest amendments to other types
19 of documents, such as the Timber Management Planning
20 Manual as an example, which applies to more than one
21 timber management plan, applies to timber management
22 planning across the area of the undertaking.

23 Is that not the case, Mr. Kennedy?

24 MR. KENNEDY: Yes, that is the case.

25 THE CHAIRMAN: So within the context of

1 timber management planning, I would suggest that the
2 Board could consider all kinds of administrative
3 provisions that might have the effect of applying
4 across the area of the undertaking in connection with
5 all management units.

6 MR. FREIDIN: And I think that I would
7 contemplate, Mr. Chairman, that you would give a very
8 clear direction as to what it was that you wanted and
9 if in fact it was - you know, I am sort of
10 hypothecating - we'd have to wait and see what your
11 specific term and condition would be.

12 THE CHAIRMAN: Well, if it were something
13 which should be included in a specific plan and
14 documented in a timber management plan--

15 MR. FREIDIN: Sure.

16 THE CHAIRMAN: --presumably the Board
17 would so state.

18 MR. FREIDIN: That's right. And...

19 THE CHAIRMAN: Sorry, Mr. Hunter.

20 MR. HUNTER: Yes, Mr. Chairman. I am
21 still trying to understand those items, those problems
22 and issues which would be purely administrative and,
23 therefore, ought not to be identified.

24 I don't think I can push it any further.

25 MR. GROVES: Mr. Hunter, maybe I might be

1 able to, from a field perspective, identify a couple of
2 the problems and issues that we as planning teams said
3 were administrative problems.

4 One was the idea of whether we contracted
5 out tree planting or actually did tree planting
6 ourselves, and the other: Was funding available, and
7 that maybe is not as clear in the fact that if funding
8 has been demonstrated that had an effect on the amount
9 of activity then it was a problem, but if funding
10 couldn't be, from reviewing the report of past
11 operations, identified as a problem, then we said it
12 was an administrative problem and no one can forecast
13 in the future that, yes, we will be short of funds.

14 So those are two things which, from my
15 experience, we have said those are administrative
16 problems and should be identified in the problems and
17 issues section.

18 MR. HUNTER: Q. Would you have any
19 difficulty in identifying, I mean one - not an endless
20 list - but identifying exactly what some of those
21 problems would be of an administrative nature in this
22 material?

23 Because I read that and it seems to me
24 that one could cover a multitude of sins by the phrase
25 'administrative in nature'. I'm simply saying -- and

1 it leads me to some concern because there seems to be a
2 preclusion built in to that provision that says you
3 can't deal with those issues.

4 Why not simply identify with some
5 specificity what those decisions are, not that it is
6 exclusive, but that it gives some clear understanding
7 as to what those concerns are.

8 That really is the end of my question on
9 that, Mr. Chairman, was simply: Would the Ministry
10 consider providing some specificity with respect to
11 what is administrative in nature, so we don't have
12 to -- because, in the converse, we will have to or try
13 to, and I don't think that makes much sense.

14 MR. KENNEDY: A. Yes, sir, we would
15 consider that.

16 Q. Thank you.

17 MRS. KOVEN: Mr. Kennedy, for problems of
18 a non-administrative nature that can't be addressed by
19 any planned actions in the timber management plan,
20 there is no suggestion here that they shouldn't be
21 included in this section?

22 MR. KENNEDY: That's correct. The
23 emphasis was on those that can be addressed within the
24 plan.

25 Q. Mr. Kennedy -- sorry. Mr. Bisschop,

1 if you could turn to page 48 of the fisheries manual,
2 and I want to go through this with you carefully
3 because you may have in fact -- you may answer one of
4 the questions, or you may have already answered one of
5 the questions already and I didn't pick it up.

6 Item 4 at the top talks about a summary
7 report, and I was originally concerned that there was
8 no comparable provision - I am not talking about the
9 substance of -- sorry, I am not talking about the
10 substance of the report, the fact remained: Was a
11 summary report prepared.

12 And I see now under 18(b):

13 "A summary of the major issues
14 encountered and addressed in the plans."

15 Can you confirm for me whether or not the
16 summary report is identified here, that is in fisheries
17 manual, is the report referred to under 18(b) and
18 please just take your time, because if that is so, then
19 we've dealt with one hurdle, then we can get into the
20 specifics of it.

21 If Mr. Kennedy can help, fine. If they
22 are not the same, then let's be clear on this one.

23 MR. BISSCHOP: A. First of all, I don't
24 see that it's equivalent.

25 Q. You do not?

1 A. No.

2 Q. Thank you.

3 A. The reference in 18(b) is very
4 specifically not identifying, if you will, a summary of
5 the plan, but rather a summary of major issues that
6 were addressed in the plan. It's, in effect, part of
7 the supplementary documentation that could be extracted
8 as a piece of information for public distribution, but
9 does not address the entire contents and nature of the
10 plan.

11 Q. Okay. I am having some difficulty.
12 Follow me through the first paragraph, this is in the
13 district manual:

14 "A report summarizing information
15 contained in the detailed report Part B
16 and identifying various feasible optional
17 management strategies and tactics which
18 could be employed in the district must be
19 prepared to enable the public to make a
20 meaningful contribution to the fisheries
21 management planning process."

22 So I am incorrect, that summary report
23 essentially is one which is prepared for the purposes
24 of assisting in the development of the plan; whereas
25 18(b) is a summary of major issues after the plan has

1 been established?

2 Am I correct in that? Could I have some
3 assistance on the matter? If I understand you then,
4 now then we can get on.

5 A. That is how I would characterize it,
6 yes.

7 Q. Okay. Then perhaps let's go to the
8 summary report and I would ask you: Are there any
9 comparable provisions in the Class EA or the timber
10 management plan in which the wording and the
11 requirements of the format as identified on the
12 right-hand side of the page are found?

13 Could you help us with that? I could
14 find nothing, but correct me if I am wrong.

15 MR. HUNTER: I think, Mr. Chairman, if
16 Mr. Freidin would allow me to editorialize while Mr.
17 Bisschop is looking at it, we see this area as being
18 very important, so...

19 MR. FREIDIN: Well, I...

20 MR. HUNTER: Okay.

21 MR. BISSCHOP: We do not produce the
22 equivalent of a summary of the plan that addresses
23 these subject matters. We do, through the information
24 centre, make provision for certain materials to be
25 available at the information centre and all of that is

1 outlined in draft term and condition No. 7.

2 And then, again referring back to 18,
3 finally when the plan is produced and approved, the
4 approved plan would contain that summary of issues that
5 were addressed and that would be publicly available.

6 MR. HUNTER: Q. That is the approved
7 plan?

8 MR. BISSCHOP: A. That's correct.

9 Q. But there is no comparable provision
10 that says in the district - and I am going again:

11 "A report summarizing must be prepared to
12 enable the public to make a meaningful
13 contribution to the fisheries management
14 planning process."

15 And at this point I'd ask you if you
16 would have, in your opinion, any difficulty with the
17 incorporation of a phrase which - I'm paraphrasing:

18 "A report summarizing information which
19 could be employed in the district must be
20 prepared to enable the public to make a
21 meaningful contribution to the timber
22 management planning process."

23 Just simply impose the words
24 'contribution to the timber management planning
25 process', and would you, in your opinion, have any

1 objections to a phrase similar to that being put into
2 the "Class EA"?

3 A. I don't believe that there is the
4 need for the production of a report to deal with this
5 requirement. I think it's a matter of what information
6 is made available publicly through the information
7 centre, and we have indicated in the explanation of
8 public consultation in the Class EA that although that
9 information centre is a one -- normally a one-day
10 affair, the information is available at the district
11 office for a period of I believe 30 days in which
12 people can review it to make comments.

13 I think it's more a matter of the
14 effectiveness of how we put the materials together and
15 display them and explain them at the public information
16 centre. I don't see necessarily that the production of
17 another document, a mini report necessarily provides
18 any additional assistance there that couldn't be dealt
19 with through a very effective information centre
20 display and provision of staff to assist in
21 explanation.

22 Q. Fair enough. We will get into this
23 at a later point in time and I will come back to those
24 issues, Mr. Bisschop, because I am obviously
25 principally concerned about the nature of information

1 which is provided directly to the native communities as
2 distinct from that which is available in an information
3 centre. But fair enough, I know your answer, that is
4 all I want to know.

5 If I could draw you down to the next
6 highlighted paragraph which says:

7 "It cannot be over emphasized..."

8 Now, obviously you have disagreed with
9 the need for a report, but I would ask you, in your
10 opinion as a planner, whether you have any difficulties
11 in principle with that highlighted paragraph and
12 whether, in your opinion, if you do, that those
13 objectives are met through the information process that
14 you have just described?

15 A. Again, I reiterate my comment that I
16 think it's a matter of how effectively we prepare and
17 present material through the information centre and
18 subsequent availability of materials at the district
19 office for public review.

20 Q. So, therefore, specifically if I were
21 to just hypothetically insert the words
22 "presentation" -- specifically:

23 "This presentation must be presented so
24 that the public can see how its contents
25 affect his/her interests so he/she can

1 provide meaningful input..."

2 You, as a question of philosophy, have no
3 difficulty with that?

4 A. I agree.

5 Q. I want to be very clear. So your
6 concern is -- or your disagreement with me is that it's
7 the report which is not required and that those
8 objectives can be met through effective presentation.
9 Is that a fair summary of what you have said?

10 A. That is a fair summary.

11 Q. Thank you.

12 THE CHAIRMAN: Mr. Hunter, if I could beg
13 your indulgence for a minute and request that Michele
14 Devaul, if she is listening in on the proceedings,
15 attend the hearing room at this time.

16 MR. HUNTER: Of course not.

17 THE CHAIRMAN: Thank you. This is a
18 little system we have from time to time, Mr. Hunter,
19 that our Board liaison officer listens into the
20 proceedings when she's not in the room and she may
21 appear and she may not. We will see.

22 MR. FREIDIN: It's amazing how re a
23 request of Mr. Hunter you do it anyway.

24 MR. HUNTER: Fine. You are asking
25 whether she could sort of -- we're beaming into her.

1 THE CHAIRMAN: That's right.

2 MR. MARTEL: Drop in.

3 MR. HUNTER: Ah, I understand, yes.

4 THE CHAIRMAN: Big Brother is not
5 watching you.

6 MR. HUNTER: I thought you were asking
7 whether she could beam into us, that's what I wasn't --

8 MRS. KOVEN: It has nothing to do with
9 your cross-examination.

10 MR. HUNTER: I thought maybe you were
11 suggesting that she had some questions that she wanted
12 to pursue.

13 MR. MARTEL: I could say something but I
14 won't.

15 MR. HUNTER: Well, we are getting on. We
16 are going to make it, we are going to make it.

17 MR. McNICOL: Mr. Hunter, if I can just
18 make a comment with regard to the approach that was
19 taken, district fisheries management plans versus
20 timber management plans.

21 MR. HUNTER: Q. Yes.

22 MR. McNICOL: A. I think as a
23 generalization, when we are talking about fisheries
24 management plans there is a much higher level of
25 interest from the public than when we talk about timber

1 management plans. People generally relate to
2 recreational resources, if you will, much more keenly
3 than they do to commercial resources.

4 The idea of presenting alternatives and
5 different approaches to dealing with issues and
6 problems was a conscious effort on our part,
7 recognizing that for many people fish are very
8 important because of the recreational aspect. So it
9 was an approach that was taken basically because we
10 thought we would garner more input, more meaningful
11 input, if you will, from the public concerning
12 fisheries management plans than we do with the rather
13 technical aspects of timber management which does not,
14 in many cases, directly affect the public, at least
15 from a recreational standpoint.

16 MRS. KOVEN: Are you saying --

17 MR. HUNTER: Q. Well, I think -- I'm
18 sorry.

19 MRS. KOVEN: Are you saying, Mr. McNicol,
20 that the public isn't astute enough to recognize that
21 timber management has an effect on fisheries, or they
22 see that as being more indirect than an actual
23 fisheries management plan?

24 MR. McNICOL: I would suggest the latter,
25 Ms. Koven, that they see that there is an indirect

1 effect obviously of timber management activities on the
2 fisheries resource, but I am speaking now of the plans
3 that are developed to deal with those specific and
4 individual resources.

5 MR. HUNTER: I think I have no difficulty
6 with what Mr. McNicol has said, Mr. Chairman. I think
7 my only reply to that is two-fold:

8 First, that may raise a substantial
9 inconsistency with respect to, for example, the views
10 of Mr. Monzon and Mr. Douglas about the need for some
11 degree of unanimity or commonness between the resource
12 manuals and there may be, from the perspective of the
13 Ministry, good reasons why there are such differences
14 between the district guidelines for fish -- the
15 planning manual for fisheries and for timber. I mean,
16 clearly from our perspective we disagree and that very
17 much is the nub of this hearing.

18 Q. Mr. Bisschop, I think this is our
19 last go-round on the guidelines. Could you please turn
20 to page 54 -- sorry, I apologize, 57, and would you also
21 go to - I think I am going to do this now - go to the
22 Class EA Document at page 155 Figure 2.1-2.

23 Have you found that, sir?

24 MR. BISSCHOP: A. Yes, I have both.

25 Q. Okay. The public review requires --

1 it doesn't state that there shall be, but it states
2 right at the bottom:

3 "Two series of public meetings would
4 normally be held."

5 Just as a question of fact so that we are
6 all operating on the same level; as I understand it,
7 the Class EA would recommend one public meeting and
8 that that would occur after the second notice had been
9 given. I am looking now at your Figure 2.1-2. Just so
10 that we are on the same wave length.

11 A. Yes.

12 MR. HUNTER: What I am going to try to
13 do, Mr. Chairman, is simply ask Mr. Bisschop whether or
14 not he has any difficulties with the following.

15 Q. Looking at your Figure 2.1-2 where
16 you have -- the provision we are seeking would
17 essentially be as follows:

18 "In an FMU where there is an Indian
19 reserve..."

20 I am speaking now strictly of NAN, so
21 there is no misunderstandings:

22 "...where there is an Indian reserve or a
23 native community..."

24 Because I am sure you are aware there are
25 communities that do not have reserve status:

1 "The following provisions would apply..."

2 And here's where I am simply going to
3 paraphrase it, and if it's too quick then tell me.

4 Under the provision which says 'public
5 notice', and I am going to come back to this when we
6 get into terms and conditions, that notification would
7 be given to the community that there will be "a plan"
8 or proposed plan for that unit.

9 Under public notice No. 2, that an
10 information package - and we will get to the details of
11 that later - will be provided 30 subsequent days where
12 you have an information centre...

13 Are we following each other?

14 MR. BISSCHOP: A. (nodding
15 affirmatively)

16 Q. There would be an open house in
17 the community, the period of time between that
18 presentation and the subsequent public notice I leave
19 open as to the matter of time right now, and then we go
20 to your third public notice. Are we together?

21 A. Yes.

22 Q. At that time the draft plan would be
23 presented to the community - and, again, it is not a
24 critical matter from our perspective, it may be from
25 yours - but at some time and following your schedule 30

1 days later; are we together, there would be a second
2 meeting in the community. Okay?

3 A. Excuse me, you are suggesting in
4 association with public notice No. 3?

5 Q. Yes, public notice No. 3. I am
6 speaking now strictly in relationship to those
7 circumstances where there is a reserve in an FMU. At
8 that point the Ministry would provide a draft of the --
9 a draft of the plan and that 30 days later roughly,
10 where it says:

11 "MNR approval of timber management
12 plan..."

13 You would then have a second meeting the
14 purpose of which would be for that community to present
15 its views.

16 A. Just so I understand, when you say
17 'second meeting', you mean the first meeting relates to
18 the earlier information centre?

19 Q. That's correct.

20 A. I guess my confusion is --

21 Q. No, no.

22 MR. FREIDIN: No.

23 MR. HUNTER: Q. In the community.

24 MR. BISSCHOP: A. When you said in
25 public notice No. 3 'draft plan is presented to

1 community' --

2 Q. No, draft plan is provided to the
3 community.

4 A. By that you mean we hand over the
5 bulk?

6 Q. Yes, you give them a draft copy.

7 A. And then 30 days later we would meet.

8 Q. Yes.

9 A. Okay. I understand.

10 Q. Okay. And then following on you
11 would then -- the fourth notice, following your list,
12 you would then provide the draft -- you would approve
13 the draft plan and there would be notice of it.

14 Shall I do that again so there is no...

15 A. I understand. If I could summarize
16 very simply what I understand--

17 Q. All right.

18 A. --in terms of your interest. In
19 relation to public notice No. 2 that we -- where we
20 have information centre, that we actually have a
21 information centre in the native community as well.

22 Q. Yes. Okay, yes.

23 A. Right.

24 Q. You have provided the information to
25 the community and then you have met with them 30 days,

1 whatever - I am not worried whether it's 30 days or 45
2 days - but subsequent to the provision of the
3 information to them you will meet with them, yes.

4 A. It's a special meeting.

5 Q. Yes.

6 A. Information centre with the native
7 community?

8 Q. That's correct.

9 A. And then similarly again for public
10 notice No. 3?

11 Q. Yes.

12 MR. FREIDIN: And just so that there is
13 no confusion, I understand that your sequence also was
14 that prior to the information centre in the community -
15 this is the native community - there would be the
16 provision by the Ministry to the community, after
17 public notice No. 2, of an information package and you
18 said the details of which we would discuss later?

19 MR. HUNTER: No, no. Let me do it again.

20 Q. Public notice No. 1:

21 "There would be notice to the community
22 that there will be a proposed plan."

23 Public notice No. 2 read:

24 "An information package will be provided
25 to the community."

1 MR. BISSCHOP: A. At the time we issue
2 the notice?

3 Q. No. Well, I was trying to follow
4 your order here. Now, it doesn't necessarily have to
5 be at the same time, I was simply trying to accommodate
6 ourselves to your order.

7 A. The important thing is though that we
8 provide advance -- in advance some materials.

9 Q. Yes.

10 A. So that when we do have the meeting
11 there, we would be speaking from a --

12 Q. You would do that twice, you would do
13 it in terms of an information package firstly.

14 A. Right.

15 Q. And once you have prepared your draft
16 plan, there would then be a subsequent meeting. That
17 is the guts of it.

18 Now, the nature of the information we
19 will deal with when we get into terms and conditions.
20 You can qualify your answer or whatever you want to do,
21 I am just simply saying as a matter of principle.

22 MR. FREIDIN: I have one point that I
23 think I should clarify to answer that question.

24 When you refer to doing that for the
25 community, I assume you are meaning native community or

1 reserve and are you including in your proposal, or will
2 you be, that that be done at each and every native
3 community and reserve in the management unit regardless
4 of the number that there may be within the management
5 unit?

6 MR. HUNTER: I think for the time being
7 we would have to say yes, Mr. Freidin.

8 MR. FREIDIN: Each and every --

9 MR. HUNTER: Yes. Well, yes, we have to
10 say that because I can't presume to preclude anybody.
11 How that is organized is something obviously that would
12 have to be dealt with in terms of negotiations.

13 MR. FREIDIN: I just want to understand.

14 MR. HUNTER: Okay.

15 MR. FREIDIN: I do now, thank you.

16 MR. HUNTER: Okay.

17 But at this time we would have to say
18 yes, so there is no misunderstandings. I am not
19 entirely sure that that is a real problem though, but
20 we can argue about that as well later on.

21 Q. So, Mr. Bisschop, are we together in
22 terms of the understanding?

23 MR. BISSCHOP: A. I understand the
24 situation, yes.

25 Q. Okay. And can you accept that

1 proposition or do you have any difficulties with that
2 proposition?

3 A. I have difficulty with it as, what I
4 would call, a universal requirement in the sense that
5 it should always happen, in each and every case both of
6 these meetings should happen.

7 For example, in a management unit in
8 which there is a native community, it's possible that
9 we could provide an information package at public
10 notice No. 2 that clearly indicated to the native
11 community that there are no operations anywhere in the
12 vicinity of that community or perhaps in any area that
13 they might even be interested beyond the community.

14 That alone may preclude the need to have
15 a subsequent meeting for public notice No. 2 and,
16 assuming that the preliminary proposals remain the same
17 into the future, that would preclude the need for the
18 meeting in relation to public notice No. 3.

19 I think it's a matter of, where required,
20 and perhaps, secondly, at the request of the community
21 itself we would, as I believe is normal practice of MNR
22 in any event, be prepared to make presentations at
23 meetings such as this to interested -- any interested
24 party in this case, specifically native communities.

25 I think it's a matter of case-by-case

1 requirement.

2 Q. Well, let me pose the question this
3 way: If there were - and I am not suggesting, I don't
4 want to mislead you that we will - but if there were
5 defined circumstances in which this process were to
6 occur and you could agree to that, would you then have
7 difficulties with - I am talking in general terms now -
8 the proposal that we have proposed that has been
9 discussed here today; that is, it would be built right
10 into the Class EA - I am not saying case-by-case in
11 which the discretion would be with the Ministry when
12 they would do it - it would be built in to the Class EA
13 or built into the Class EA if the Board would approve
14 it, the circumstances and the sequence through which
15 the public consultation process would occur comparable
16 to that which we have just discussed here?

17 A. I think the equivalent situation that
18 I would use as a basis would be the situation we are
19 facing dealing with the French Language Services Act.

20 Q. I hope not as complicated as that.

21 A. Well, I can't speak to the complexity
22 of that. But, for example in those -- as I understand
23 it, in those -- the situation of that Act, there are
24 specific MNR districts that are identified as requiring
25 the availability of French translation. The equivalent

1 I think would be -- well, first of all, management
2 units in which there is a native community.

3 Q. Yes.

4 A. There are some that wouldn't have, so
5 that would be a specific that could be identified.

6 Q. I think I qualified my point by
7 saying in an FMU where there was a native community or
8 native reserve. Yes. Okay.

9 THE CHAIRMAN: Mr. Hunter, you are
10 talking only about NAN communities at this point as
11 well.

12 MR. HUNTER: That's correct, sir.

13 THE CHAIRMAN: So presumably this would
14 apply to other groups as well, if they so desired?

15 MR. HUNTER: If they so desired.

16 THE CHAIRMAN: You wouldn't be -- are you
17 suggesting a condition that would limit it to a NAN
18 community?

19 MR. HUNTER: Well, that is a good point.
20 I think the best I can help the Board with is I can
21 only speak to my client's interests and I think,
22 therefore, I would have to say only with respect to
23 NAN.

24 THE CHAIRMAN: And certainly the
25 principle would have similar application to other

1 native communities?

2 MR. HUNTER: If they chose to.

3 THE CHAIRMAN: Well, whatever the
4 criteria--

5 MR. HUNTER: Mm-hmm.

6 THE CHAIRMAN: --may be adopted in terms
7 of these defined circumstances which would kick in this
8 additional proposed public consultation?

9 MR. HUNTER: And I would imagine as a
10 matter of practical application that the demands would
11 be substantially different across NAN. There would be
12 some areas, as I am sure the Ministry recognizes, where
13 the requirements or the need to meet with the Ministry
14 would be far greater than other parts of the province.

15 Again, one would not even expect
16 uniformity across NAN with respect to this, but in
17 relationship to some particular communities, they feel
18 very strongly with respect to the need for a defined
19 process; in other words, to resolve these issues with
20 the Ministry. So...

21 MRS. KOVEN: Please remind us again of
22 the approximate number of NAN reserves and communities?
23 We were given a list at one point, I think.

24 MR. HUNTER: Well, there are 44 NAN
25 communities across northern Ontario and I believe that

1 there are approximately 15 that are either in the area
2 of the undertaking or very, very close to it.

3 In other words, there are communities
4 whose activities extend south of the Albany or into
5 areas where there may be effects from the area of the
6 undertaking. So, in that regard, we are not even
7 speaking about a substantial number of communities.

8 That is premised on the fact that this
9 plan does not be flipped over at some future point into
10 the norther where there are a larger number of
11 communities and large communities.

12 THE CHAIRMAN: No doubt we will be
13 returning for the return engagement.

14 MR. HUNTER: I suspect so.

15 MR. FREIDIN: And I am sure that Ms.
16 Bair-Muirhead can probably advise us of the number of
17 similar communities in relation to Treaty No. 3 at the
18 appropriate time.

19 MR. HUNTER: I think my only --

20 Q. I am sorry, Mr. Bisschop, I have
21 given you my best shot at it; that is what I have just
22 simply said and I ask, first: Do you have -- given
23 what I have just said, do you have any difficulties?

24 MR. BISSCHOP: A. If I can --

25 Q. You may have difficulties, but...

1 A. I think any such provisions, as long
2 as there is, I guess what I would - and I am not sure
3 that the word incremental is right one to use - I could
4 see - and I am speaking from my position, as you know,
5 that would have to be something that the Ministry would
6 have to take a position on - I could see us providing
7 information for public notice No. 2 that in turn the
8 NAN community upon review would request us to make --
9 to have a meeting or make further submissions on if
10 they were concerned that an area in their vicinity was
11 affected and they had concerns about operations there.

12 I would expect that we would like to see
13 it left to the community to request further
14 consultations and, therefore, the requirement for, for
15 example, the additional information centre in the
16 community and the requirement for a meeting later on to
17 explain the draft plan would be our response to an
18 initiative taken by the community to request further
19 consultation.

20 I think it has to be a two-way kind of
21 consultation in the sense that I don't see it advisable
22 for us to make a commitment to universally provide for
23 two meetings when perhaps there is no interest, no
24 interest because the community has considered that
25 there is no particular effects they are concerned

1 about, as a universal requirement.

2 Rather provide, as I have indicated, the
3 initial package of information for public notice 2 and
4 then, as the community responds, deal with further
5 requirements whether they be information centre,
6 provision of the draft plan, another meeting, whatever.

7 THE CHAIRMAN: Mr. Hunter, perhaps we
8 could suggest that the way around this, I would suggest
9 apparent impasse, is to formulate at the appropriate
10 time a draft condition outlining the particular
11 circumstances which would kick in this proposal, then
12 the Ministry could respond to something specific.

13 MR. HUNTER: I accept that. I think just
14 one final comment perhaps to Mr. Bisschop that he can
15 perhaps give some thought to.

16 Q. I don't think we are that far apart
17 because it very well may be that the provisions in the
18 planning manual would be appropriate for both parties
19 because they simply refer to 'normally will be had' and
20 it doesn't seem to me that it's absolutely mandatory,
21 but my colleagues and my clients may have different
22 views.

23 MRS. KOVEN: Mr. Bisschop, on that last
24 point, are you speaking from your experience of your
25 public information sessions generally and do you find

1 the public interest falls off after the first
2 information centre?

3 MR. BISSCHOP: I am not sure I am the
4 person to put that question to, Mrs. Koven, but my
5 understanding is that certainly after the information
6 centre, the audience becomes more focused in the sense
7 that people who are directly affected will continue
8 involvement through the process and others would not
9 have a continued interest.

10 MR. MARTEL: Has there been any
11 experience with making a presentation in one community
12 on a plan and then going to a native community to make
13 a presentation, since I assume some of the native
14 communities in fact are isolated part of the year,
15 might not have public access, and how do you respond to
16 that need?

17 MR. BISSCHOP: I think Mr. Fleet and
18 perhaps Mr. Davison can give you some examples, Mr.
19 Martel, of that.

20 MR. MARTEL: Fine, thank you.

21 MR. FLEET: Okay. Mr. Martel, with
22 respect to the Kiashke Management Unit in the Nipigon
23 District, I am not sure whether it was at our
24 suggestion or at the request of the Band, we did
25 conduct an information centre on the Gulf Bay Reserve

1 for the preparation of that timber management plan.

2 We also have other examples where upon
3 request we have held information centres. Now, not
4 necessarily for natives but, for example, I attended
5 one at a logging camp. And we will sometimes hold
6 multiple information centres if there are, say, three
7 communities within the area of a management unit, we
8 will go to those three communities on consecutive days.

9 So the practice has been generally that
10 upon request we will hold that information centre if
11 somebody requests it.

12 MR. MARTEL: If I understand Mr. Hunter's
13 proposal though, he's looking for an opportunity after
14 the first package for a more direct, I would think,
15 input into what eventually would be the draft plan.

16 MR. HUNTER: That's correct, sir. That
17 is principally the purpose of the second meeting.

18 MR. FLEET: There are also numerous
19 examples of special meetings where there were specific
20 interests or groups or whatever where we have either by
21 request or at the initiative of the local MNR staff had
22 special meetings in response to input received from
23 either the information centre or sometimes the draft
24 plan where we will indeed have that type of meeting,
25 and I don't know if I would characterize it as

1 additional input, but certainly additional opportunity.

2 MR. MARTEL: Prior to the plan being
3 drafted?

4 MR. FLEET: Sometimes prior to and
5 sometimes as a result of the review of the draft plan
6 as well.

7 MR. MARTEL: Thank you.

8 MR. HUNTER: Mr. Chairman, that completes
9 the first part of the cross-examination. We are now
10 going to turn to the terms and conditions, Exhibit 700,
11 I believe it is.

12 THE CHAIRMAN: How long do you intend to
13 be in this part of your examination?

14 MR. HUNTER: Hopefully very brief. It
15 depends entirely on Mr. Bisschop and Mr. Kennedy. I am
16 certainly hoping the way we have structured this review
17 that it will be completed today.

18 THE CHAIRMAN: But you are not going to
19 be completing it before the lunch hour?

20 MR. HUNTER: I don't think so. I would
21 like to try, but I don't think so, no.

22 MR. MARTEL: Late lunch.

23 MR. HUNTER: Do you want to break for
24 lunch now and come back?

25 THE CHAIRMAN: Well, it's twelve o'clock.

1 Why don't we break for lunch and then come back and go
2 at it immediately after.

3 MR. HUNTER: What has been your practice?
4 I would certainly be more than pleased to really push
5 through and complete today, if that is possible. I
6 know we are all tired.

7 THE CHAIRMAN: We would certainly like to
8 complete today as well. So we will just sit perhaps a
9 bit later, if necessary, to have it completed today.

10 MR. HUNTER: We couldn't bring lunch in,
11 I guess.

12 THE CHAIRMAN: You could, but...

13 MR. HUNTER: You won't, all right.

14 THE CHAIRMAN: We won't.

15 MR. HUNTER: Okay. Thank you. What
16 time?

17 THE CHAIRMAN: 1:30.

18 MR. HUNTER: 1:30.

19 THE CHAIRMAN: Thank you.

20 ---Luncheon recess taken at 11:55 a.m.

21 ---On resuming at 1:35 p.m.

22 THE CHAIRMAN: Thank you. Be seated
23 please.

24 Ladies and gentlemen, with respect to the
25 scheduling, we would like to ascertain a couple of

1 things and that is, firstly, Mr. Axford, how long do
2 you expect you might be?

3 MR. AXFORD: We would hope by a morning
4 or an afternoon.

5 THE CHAIRMAN: Half a day?

6 MR. AXFORD: Yes.

7 THE CHAIRMAN: Ms. Bair-Muirhead, how
8 long would you be?

9 MS. BAIR-MUIRHEAD: Two to three hours.

10 THE CHAIRMAN: So that's also an
11 afternoon or a morning.

12 All right. The Board is considering
13 sitting late today, as long as it takes to finish you,
14 Mr. Hunter.

15 MR. HUNTER: So to speak.

16 THE CHAIRMAN: So to speak. And then
17 tomorrow commencing with the other two parties and
18 starting at 8:00 a.m. with three quarters of an hour
19 for lunch so that we will ensure that we finish both of
20 you without unduly rushing you, and that should leave
21 us enough time - and perhaps we can adjust the lunch
22 hour if it looks like there is no problem in
23 finishing - so that we will depart here at
24 approximately 3:30, rather than waiting until a seven
25 o'clock departure.

1 We feel that we will be able to pick up
2 roughly the same number of hours, it will accommodate
3 one of the Board members not having to wait in an
4 airport for three or four hours and, as long as we
5 finish the remaining two parties, we think that will be
6 sufficient, and then we will just finish with the
7 Ministry of the Environment the following day.

8 Very well.

9 MR. HUNTER: Thank you, Mr. Chairman.

10 Mr. Chairman, I would now like to proceed
11 to the terms and conditions and we have covered some of
12 the matters in a previous cross-examination.

13 Q. Mr. Bisschop, I presume you will
14 either answer and/or field these questions; is that
15 fair?

16 MR. BISSCHOP: A. Yes.

17 Q. Okay. If you could go to Schedule A,
18 The Planning Process, and I draw your attention to the
19 first paragraph, and I'm sure this is simply an
20 oversight, but the sentence says:

21 "Timber management plans shall be
22 prepared for each forest management unit
23 in Ontario."

24 Am I correct in presuming that 'in
25 Ontario' was qualified with the words 'within the area

1 of the undertaking'?

2 A. That's correct.

3 Q. So those words should be inserted
4 after 'in Ontario'; is that correct?

5 THE CHAIRMAN: Are you anticipating, Mr.
6 Kennedy, a different planning process for areas outside
7 the area of the undertaking?

8 MR. KENNEDY: No, I don't believe we will
9 be looking for a different planning process, we may be
10 looking for a different Environmental Assessment Act
11 coverage.

12 In this case I think, Mr. Hunter, the
13 classification for 'within the area of the undertaking'
14 may not be necessary as it is outlined in No. 2 above
15 of which Schedule A is attached to.

16 MR. HUNTER: Q. Well, fine, I won't
17 debate it with you, Mr. Kennedy, but I wanted the Board
18 to be aware that the phrase 'in Ontario' incorporates
19 the concept that it is meaning -- Ontario meaning
20 within the area of the undertaking and not all of
21 Ontario.

22 And if the Board is satisfied that that's
23 clearly established by virtue of Items 1 and 2 above,
24 then so be it. But I think -- I'm sure this is a
25 subject that we will be returning to again, but I

1 simply wanted to draw this to the Board's attention.

2 And with respect to the phrase:

3 "In accordance with MNR's timber
4 management planning process..."

5 Can I assume that that means in
6 accordance with the class environmental assessment and
7 the timber management manuals, Timber Management
8 Planning Manual?

9 MR. BISSCHOP: A. Yes, with the
10 understanding that there may be from time to time
11 changes to the Timber Management Planning Manual to
12 improve documentation requirements.

13 Q. I think that --

14 THE CHAIRMAN: Well, excuse me a moment.
15 I am just contemplating what you are questioning and
16 I'm not sure - and I put this to the panel - that the
17 wording shouldn't somehow encompass the timber
18 management planning process as opposed to a particular
19 document or documents because of the Board's view that
20 the EA process constitutes more than just the
21 documentation and, in fact, includes all of the
22 evidence admitted by the Board during the course of the
23 hearing itself.

24 So that the Board's decision in this
25 matter will obviously make reference to some

1 documentation, but it may go beyond the documentation,
2 and if you just limit it to the documentation you may
3 not be covering everything that the Board feels the
4 planning process covers in terms of the evidence
5 adduced at this hearing which, of course, going back
6 includes the documentation specifically. I don't know
7 if I am confusing things or not.

8 MR. HUNTER: Well, I am presuming,
9 perhaps incorrectly, at the end of the day you will
10 hand down an order --

11 THE CHAIRMAN: Unless the EA is amended
12 to include--

13 MR. HUNTER: Yes.

14 THE CHAIRMAN: --other things that are
15 adduced at the hearing that is not part of the EA and
16 other documentation as they presently exist.

17 In other words, if it's incorporated by
18 way of amending the documentation to include everything
19 else that's dealt with at the hearing which the Board
20 feels should be included, then I suppose we get around
21 the objection I am stating.

22 MR. FREIDIN: I think my comments will
23 address your concern. The Ministry's view is that the
24 terms and conditions, particularly for example this
25 reference to the timber management planning process,

1 having been followed, that the Board will provide an
2 order with attendant terms and conditions and those
3 terms and conditions will obviously have to be complied
4 with, in particular in relation to the timber
5 management planning process - I believe the witnesses
6 can refer you to the term and condition - it indicates
7 that the planning process as developed, or as imposed
8 by the Board as a condition, will be incorporated into
9 the Timber Management Planning Manual. That is a
10 specific term or condition that we have.

11 In terms of sort of further direction by
12 way of interpretation perhaps as to what those terms
13 and conditions might involve, I think that is where the
14 Board's job - not to suggest that any part of the
15 Board's job is not important - but that is where it
16 becomes particularly important because I see your
17 Reasons for Decision become important in terms of
18 perhaps interpreting the exact import of the term or
19 condition if there is any question about it.

20 And so I see surviving the environmental
21 assessment hearing an order -- if you will, a
22 stand-alone order with terms and conditions and
23 detailed Reasons for Decision to assist, if necessary,
24 in the interpretation of those terms and conditions.

25 THE CHAIRMAN: Well, I think that's an

1 area that we would like to give further thought to and
2 perhaps counsel at the end of the day; what form a
3 decision would take in terms of describing what
4 constitutes the process, as opposed, Mr. Hunter, to
5 specific documents by name which may not include the
6 entire process.

7 I guess the problem the Board is having
8 is visualizing how three or four documents may totally
9 encompass the whole process.

10 MR. HUNTER: All I can add to that, Mr.
11 Chairman, is certainly my sense of it is that in fact
12 where appropriate this document would be changed, in
13 terms of terms and conditions, and where necessary the
14 Timber Management Planning Manual would have been
15 changed as a much more -- this document essentially
16 being processed, this document essentially being
17 substance and there may be other materials, but that at
18 the end of the day there would be a set of documents
19 which would establish the terms and conditions for the
20 planning process. Now, if --

21 THE CHAIRMAN: Okay. And I am just
22 having a little difficulty understanding where the
23 Board's Reasons for Decision fit into what you are
24 saying, and it may well be that it follows along with
25 what Mr. Freidin has made submissions on, I don't know,

1 but it is something we can deal with I think at the end
2 of the case.

3 MR. FREIDIN: It certainly is something
4 that we have wrestled with and it may be a bit more
5 complicated than it might appear at first blush. And I
6 think your suggestion to deal with that at the end
7 perhaps is appropriate, subject to other matters
8 perhaps arising.

9 THE CHAIRMAN: Okay. If we could move
10 on, Mr. Hunter.

11 MR. HUNTER: Okay.

12 Q. Mr. Bisschop, with respect to the
13 planning teams, I wanted to just pose to you for your
14 consideration the insertion of a clause that would
15 essentially say:

16 "Where a reserve or native community
17 is within the boundaries of the forest
18 management unit, that a Band member would
19 be a member of the planning team to
20 represent that community's interests."

21 Is this an idea which the Ministry or, in
22 your opinion, can be accepted?

23 MR. BISSCHOP: A. I think, Mr. Hunter,
24 we have made our position clear on this matter, that we
25 do not accept the need for that kind of membership on

1 planning teams. We provide for involvement of
2 interested and affected parties through public
3 consultation. The problem becomes one of accommodating
4 any interested party who has the same interest and the
5 practical workability of large groups of people on
6 planning teams.

7 Q. Thank you. If we could go to --

8 MR. HUNTER: Mr. Chairman, I have
9 essentially covered the provisions under public
10 consultation in my previous cross-examination. I don't
11 wish it to be misunderstood that my non-questions on
12 this portion mean agreement.

13 What we will do is when we prepare our
14 terms and conditions, we will be addressing the
15 provisions here. I think I have enough to go on in
16 relationship with the previous cross, so I will not get
17 into the specifics here.

18 THE CHAIRMAN: Very well.

19 MR. HUNTER: Q. And page 4, Mr.
20 Bisschop, at 3(c), the last paragraph:

21 "On request, notices to Band Councils
22 and native communities...will be provided
23 in the appropriate native languages."

24 I am speaking now strictly in the case of
25 NAN and I would like your opinion on the change to that

1 paragraph which would say:

2 "Shall be translated --"

3 Or, sorry:

4 "Shall be translated and provided to the
5 Band Councils..."

6 As distinct from on request. My reason
7 for that is that there are a large number of
8 communities in which English is not spoken and, in many
9 instances, it is a second language for many people.

10 MR. BISSCHOP: A. I think the position
11 of the Ministry is on record here in the sense that we
12 would provide the notices when requested.

13 Q. Okay, thank you.

14 MR. MARTEL: Can I ask you a question?
15 What if they don't know what's happening?

16 MR. BISSCHOP: Pardon me? Excuse me,
17 I --

18 MR. MARTEL: If they don't know that in
19 fact, because some of them are isolated, that a plan
20 isn't going to occur, how are they expected to in fact
21 then ask for an opportunity to be present?

22 MR. BISSCHOP: Mr. Martel, if you look at
23 3(b) --

24 MR. MARTEL: Yes.

25 MR. BISSCHOP: --we would be providing

1 the notice in the English language. What I would
2 anticipate happens here is, as a result of providing
3 the notice in the English language, we may get a
4 request to translate that notice for purposes of use by
5 the Band to communicate with their members and that's
6 how I see the 'on request' nature of these notices
7 working.

8 They will get the English notice, it is
9 then basically up to them to indicate whether there is
10 a need to provide the notice in translated language.

11 MR. MARTEL: Do you intend to make your
12 notice, let's say, to the francophone community or to a
13 francophone organization in English or in French?

14 MR. BISSCHOP: I believe -- I'm not
15 exactly sure of this, but I believe in those districts
16 that are designated under the French Language Services
17 Act the notice is in English with a note at the bottom
18 in French referring to -- referring any interested
19 parties to the district, I believe. I don't think
20 there is a complete French translation of the notice.

21 THE CHAIRMAN: Well, you might check
22 that, Mr. Bisschop. I am not certain of the exact
23 provisions of the French Language Services Act, but
24 certainly many tribunals, such as the Environmental
25 Assessment Board, have reviewed the provisions of that

1 Act recently and, in fact, have adopted rules of
2 practice under that Act which will essentially allow
3 for notices of hearing, for instance, to go out in both
4 languages in designated areas.

5 MR. BISSCHOP: Mr. Chairman, I was simply
6 trying to reflect my understanding of what the Ministry
7 does today, and I believe we issue English notices with
8 a statement at the bottom in French.

9 THE CHAIRMAN: No, but is that what they
10 are going to do after November 1st?

11 MR. FREIDIN: I can make inquiries and
12 advise, Mr. Chairman.

13 MR. MARTEL: And at the same time then,
14 if it in fact proves out to be what the Chairman has
15 just indicated, should we not accommodate the First
16 Nation of Canada in the same way we would the English
17 and the French in this country?

18 THE CHAIRMAN: You might want to review
19 the Ministry's position on that.

20 MR. FREIDIN: Yes, I will.

21 MR. HUNTER: Thank you, Mr. Chairman.

22 Q. At point 4, Mr. Bisschop, it says:

23 "Public notice requirements for each
24 notification shall also include general
25 public notices in the form of

1 advertisements in the local media."

2 We would like to see inserted there a
3 phrase which would identify:

4 "The publication should be made in Indian
5 publications or native publications such
6 as Wawatay."

7 In your opinion, do you have any
8 difficulties with that?

9 MR. BISSCHOP: A. Do you mean in
10 translated version?

11 Q. Yes. Well, both in English and in
12 Oji-Cree, yes.

13 A. I'm not certain of what the Ministry
14 practice has been, particularly in terms of
15 translation. I am aware that we have advertised from
16 time to time in the Wawatay News, but I'm not aware if
17 we have done that in translation and I think I can only
18 advise that that is another matter the Ministry would
19 have to take into consideration on notice.

20 Q. Thank you. If we could now go to
21 Item 6 on page 5, Mr. Bisschop, which is the subject of
22 the value maps, and I want to simply try to get a sense
23 of the planning principles behind these provisions and
24 their history.

25 Firstly, in the Class Environmental

1 Document at 158, the concept -- at line 33, the concept
2 of a values map is introduced. Correct me if I am
3 wrong, but this is the only reference in the Class
4 Environmental Assessment to the values map; would that
5 be a correct...

6 A. You are incorrect, the concept --

7 Q. Incorrect?

8 A. Incorrect.

9 Q. Okay. Where else --

10 A. The concept is introduced on page
11 114.

12 Q. Okay.

13 A. Starting at line 9, 114.

14 Q. Okay, thank you.

15 A. And on page 158 we simply refer to
16 the fact that that product, that map must be available
17 at the information centre.

18 Q. It's not referenced in the Timber
19 Management Planning Manual; am I correct there?

20 A. That's correct.

21 Q. And what is the reason for that?

22 A. The concept of values map was
23 introduced with the June, 1987 amendments to the Class
24 EA. The appropriate changes to the Timber Management
25 Planning Manual through the mechanism that we have used

1 with respect to blue pages has not yet been dealt with
2 in the Timber Management Planning Manual.

3 THE CHAIRMAN: Are you assuming that it
4 would be done as a result of the Board's decision, or
5 are you going to do it before then?

6 MR. BISSCHOP: I think we have indicated
7 our position on further changes to the manual would be
8 that we await the decision of the Board.

9 MR. HUNTER: Q. Could you turn --

10 MR. FREIDIN: The evidence is of course
11 that the field are still required to follow the
12 direction about value maps as contained in the EA
13 Document.

14 MR. HUNTER: Q. Would you turn to
15 volume -- Exhibit 813A, Volume 1, at page 213, 214 and
16 215 and, at the same time, if you could go to Exhibit
17 700, page 6 -- sorry, page 5 at Item 6.

18 MR. FREIDIN: What page?

19 MR. HUNTER: Page 5. What I am referring
20 to as Item 6 or Condition 6.

21 Q. And I want to understand. Was this
22 list - I'm going to refer to it as a list - background
23 information at 213, 214, 215, is that the list which is
24 presently being used for the purposes of identifying
25 resource values?

1 MR. BISSCHOP: A. Yes.

2 Q. And we have a list at page 5, term
3 and condition 6 which is another list and my question
4 is, firstly, why have you changed the list, why haven't
5 you simply put in those items identified 213, 214 and
6 215?

7 MR. KENNEDY: A. Mr. Hunter, perhaps I
8 could help you out there. We have dealt with this both
9 in evidence-in-chief and also in -- it gave raise to
10 some concern in earlier cross-examination, wherein the
11 term and condition No. 6, a simply listing of the
12 headings that you will find on pages 213 to 215 of the
13 witness statement.

14 It was an effort made to be brief in the
15 term and condition. You will note that under the term
16 and condition we have used examples and picked -- and
17 chosen to show several of resource values and features
18 after each one of the headings.

19 Q. My concern, Mr. Kennedy, is that in
20 your effort to be brief, what guarantee do we have that
21 the very items which are identified at 213, 214 and 215
22 would in fact be identified.

23 In other words, (a) through to (e) can be
24 viewed as being particularly broad, the four examples
25 refer only to some of the items that you have

1 identified at 213, 214 and 215. So my concern is why
2 not have a very clearly defined list?

3 MR. BISSCHOP: A. We should note, Mr.
4 Hunter, that we have always indicated that the list
5 that appears at pages 213 to 215 of Exhibit 813 has
6 never been intended to be all inclusive, it was an
7 attempt to be as comprehensive as possible at that time
8 knowing that all of those features do not exist in
9 every management unit in the province and that there
10 may be other information that is available in
11 management units and the list could be expanded.

12 We've simply -- it is as simple as, in
13 condition No. 6, attempting to summarize the direction
14 on those three pages.

15 Q. Mr. Bisschop, do I understand your
16 position to be that you are opposed to - I don't want
17 to refer to it as a checklist - but that you are
18 opposed to a list which, for the sake of an example,
19 would be comparable to that in a Class Environmental
20 Assessment on shoreline improvement?

21 Now, I can go and find that document if
22 we have to, but I don't think we do. I don't
23 understand why the Ministry has a concern about a list
24 which says: Here are the things that you will be
25 identifying; and recognizing, of course, that it cannot

1 be ever -- cannot contemplate everything, simply have
2 at the bottom of that: And here is another box that
3 says, here are the things that we have seen that we
4 haven't identified previously.

5 Why can't we do that?

6 MR. KENNEDY: A. I believe we have done
7 that by including it in the witness statement. We also
8 made note when we presented this list on pages 213 to
9 215 that it is part of a previous exhibit that we
10 filed, Exhibit 5A--

11 Q. Mm-hmm.

12 A. --which deals with additional
13 information to the government review.

14 Q. But, Mr. Kennedy, then my question to
15 you is: Why can't we put 213, as a concept 213, 214
16 and 215 into the term and condition as distinct from
17 the general categories which we have here?

18 A. I see no reason not to.

19 Q. Thank you.

20 THE CHAIRMAN: Well, Mr. Hunter, as my
21 colleague points out, this gets back to our earlier
22 discussion in terms of the Board's decision as to what
23 exactly is included.

24 It is not going to obviously contain just
25 the Class EA and conditions, it may also include other

1 things that are referred to in evidence such as a list
2 like this which is part of the evidence before the
3 Board but wouldn't appear per se in a Class EA
4 Document, the planning manual or conditions of approval
5 neccesarily.

6 MR. HUNTER: Yes, but I am looking at it
7 from my end of the exercise, Mr. Chairman. We will be
8 presenting --

9 THE CHAIRMAN: You would like it to be
10 part of the other--

11 MR. HUNTER: Yes, yes.

12 THE CHAIRMAN: --but I am suggesting that
13 notwithstanding we do identify, Mr. Hunter, there will
14 be things that parties miss that may have been included
15 elsewhere in the evidence and were intended to be part
16 of the process.

17 And I think we should looking at a
18 mechanism at the end of the day as to how to include
19 non-delineated items which have nevertheless been
20 canvassed and to which the Board has agreed.

21 MR. MARTEL: There are 17 volumes of
22 information from which we base a decision, so you
23 couldn't get it all into the decision I don't think.

24 MR. FREIDIN: I was just going to add,
25 and tens of thousands of pages of evidence.

1 THE CHAIRMAN: And we have already
2 undertaken that our decision will not be tens of
3 thousands of pages long.

4 MR. FREIDIN: I think you've also said to
5 some people, Mr. Hunter, that that's when our job also
6 becomes particularly important.

7 MR. HUNTER: When have you said --

8 MR. FREIDIN: To wade through all of the
9 tens of thousands of pages--

10 MR. HUNTER: Oh, I see.

11 MR. FREIDIN: --and assist the Board in
12 determining what it is that they should put in their
13 order. A task to look forward to.

14 MR. HUNTER: That's right.

15 THE CHAIRMAN: Within reason, Mr.
16 Freidin. I can think of other proceedings not so long
17 ago where that proved to be particularly embarrassing--

18 MR. HUNTER: A problem.

19 THE CHAIRMAN: --problematic.

20 MR. HUNTER: Q. Mr. Bisschop, just to --
21 perhaps you have answered this in previous cross and I
22 have missed it in my review, but how does an item
23 qualify to get on -- and I am going to go back to the
24 list 213, 214, 215 because, as I understand it, that's
25 what you are working with now; is that correct?

1 MR. BISSCHOP: A. Yes, that's correct.

2 Q. That's what you said. How does an
3 item get on there? How do you...

4 A. How did we produce that list?

5 Q. Yes. How do you produce that list
6 and how does this list work?

7 For example, under commercial fur, what
8 would be the criteria that would say that there are
9 trap lines there? Is it the fact that there is a trap
10 line there that would immediately put it on to this
11 list, or does someone make a qualitative decision as to
12 the importance or value of that trap line?

13 A. It is not all that rigorous. When we
14 produce the list it was an assemblage of commonly
15 occurring information on values, if you will, that were
16 encountered in many management units. A list was
17 prepared and reviewed by various regional staff, some
18 district staff I think, and it was simply a matter of
19 recording commonly occurring features that are dealt
20 with in planning.

21 There is certainly no mystery nor
22 screening criteria or whatever that come into play to
23 determine whether something actually does get on the
24 list. It was -- as I indicated, it was never intended
25 to be all inclusive, it rather represents commonly

1 occurring features and values that need to be
2 considered in planning.

3 Q. Perhaps just one more question on
4 this. When you for example identify -- for example, I
5 notice under natural resource features, fisheries,
6 there is no reference to commercial fisheries. And I
7 will raise that as a specific example that I had to
8 deal with recently where we went through an exercise in
9 identifying whether or not -- with the Ministry,
10 whether or not a particular use should or could occur
11 in a particular area, and at the time of those
12 negotiations we raised the fact that there had been a
13 commercial fishery there and the licence for that
14 particular fishery had not been utilized and had not
15 been transferred for, I think it was around three
16 years, but yet there had been a commercial fishery
17 there.

18 Would something of that nature be picked
19 up in this list; in other words, the fact that
20 something is not being used at this particular point in
21 time, would that be identified or how would that be
22 identified in relationship to the list on 213, 214 and
23 215?

24 Basically I am saying: How does
25 something get on the list? How do you identify that

1 there is, for the sake of argument, a commercial
2 fishery?

3 A. I'm not sure that something like a
4 commercial fishery is the kind of thing that appears on
5 this list in the sense that, other than perhaps being
6 able to identify the lake or waterbody in which the
7 commercial fishery occurs is identifiable
8 geographically.

9 The fisheries features and values that
10 are identified under natural resource features are
11 those geographically identifiable, site-specific kinds
12 of features. The aspect of commercial use, if it were
13 to be recorded, would be under the resource uses values
14 segment, but it isn't on the list and...

15 MR. KENNEDY: A. If I could add, Mr.
16 Hunter, that the intent of the list is to alert people
17 to the kind of information that is mappable and can be
18 shown on the values map itself. It can be possible
19 that someone would come forward at an information
20 centre and ask for a notation on a lake, they would
21 indicate that there has been a use in the past and
22 maybe being contemplated in the future.

23 Q. Okay. That's a very important point.
24 Is this list essentially driven by people coming to you
25 and saying: Here are the features which were out

1 there?

2 A. If I could --

3 Q. Just to follow-up on the example you
4 have just given me.

5 A. I would suggest maybe shift your
6 focus in that the list would be viewed as the kind of
7 things that would regularly show on a values map. When
8 we people come to an information centre, the emphasis
9 wouldn't be on including their value on this list, but
10 to include the site-specific value or use that they are
11 aware of on the values map which would then alert the
12 planning team to how that value can be accommodated or
13 incorporated into the planning process.

14 Q. But then I'm not -- my focus may not
15 have been precise, but does that -- my question was:
16 Does this list essentially work on the basis of people
17 coming forward to you and providing you with that
18 information rather than you going out and obtaining
19 this information? I am following up on the particular
20 point that you just raised.

21 A. Okay. I'm not sure I am quite clear.
22 If you are asking: Who is responsible for providing
23 this kind of information, the information relating to
24 the features on the list?

25 Q. Mm-hmm.

1 A. I would say that is a shared
2 responsibility between all stakeholders, as we have
3 talked of before, primarily the interest -- or the
4 responsibility lies with MNR to bring that information
5 that is known from whatever source to the information
6 centre and ask the public at large to confirm and to
7 add to those known values and known uses.

8 So collectively through the planning
9 process we try to ensure that we have all the values
10 captured, recognized on the front of the values map. I
11 should add, the values map has a summary and it would
12 be reasonable to have other information that is not
13 shown on the value map that may not be mappable --

14 Q. Let me try to -- okay, sorry. Let me
15 try to rephrase it another way. Is there someone on
16 the planning team who looks at this list - you are in
17 the process, in initial stages of planning for a timber
18 management plan, you have to go through a values
19 exercise - is there someone on the planning team who
20 says: Okay, we are going to look at the ground, I have
21 a quota list in front of me and I will be responsible
22 to "fill in the boxes" either in the sense that there
23 is a concern, a value, or there is not a value?

24 A. I would say there isn't a single
25 individual that looks after the entire range of values,

1 but collectively through the planning team that is
2 done. There would be a division of some of the
3 workload through the assignment of responsibilities
4 through the development of the terms of reference for
5 the planning team members.

6 MR. FLEET: A. Mr. Hunter, if you look
7 in that same exhibit on page 242, that's an example of
8 the terms of reference for the Wabigoon Management Unit
9 and there are at various points in that list
10 individuals designated for making contributions to the
11 values map.

12 The first individual, Cathy Cavalier
13 midway down, providing advice -- providing input into
14 the values map in areas of concern for the Dryden
15 District; the next individual, Blake Foster, providing
16 input into the values map in areas of concern for the
17 Sioux Lookout District because this particular
18 management unit crosses a district boundary. So there
19 are in fact planning team members who have some
20 designated responsibility for the preparation of that
21 map.

22 Q. Are they the individuals who make the
23 decision to put a particular value on the map?

24 I am simply trying to understand the --
25 is it, as I think it was Mr. Bisschop suggested, that

1 you didn't need -- was it as simple as somebody saying:
2 There is a river there or there is a lake there that
3 provides bait fish and that's it, or is there some form
4 of qualitative assessment which goes into the exercise,
5 firstly; and, secondly, are these the people who do
6 that?

7 A. Well, I would suggest that for the
8 most part it is simply the identification of the value
9 qualifies it for the inclusion on the values map.

10 Q. Okay. That's all I'm trying to get
11 at.

12 MR. MARTEL: But does someone not verify
13 it or attempt to verify it?

14 MR. KENNEDY: Yes, Mr. Martel. I had
15 indicated that when new information comes forward we do
16 attempt to verify that new piece of information to
17 ensure that it is correct, factually correct so that we
18 don't mislead anybody.

19 MR. FLEET: And there may be cases where
20 there are differences in perception as to - but they
21 are the exception - as to whether or not there is a
22 value or whether or not there is already a
23 pre-obligation for a value.

24 The example I had talked to earlier was
25 with respect to remote tourism where somebody might

1 have identified a lake as a potential remote tourism
2 lake and there may already, through the District Land
3 Use Guidelines, for example, be an obligation with that
4 particular lake for cottaging and, therefore, there is
5 a decision associated with the identification of that
6 value, in that case driven by DLUG, but that would be a
7 cottage lake value versus a remote tourism opportunity.

8 Q. Well, I am not sure I will pretend to
9 really understand.

10 Mr. Bisschop, in your opinion, what are
11 the purposes of the value maps from an environmental
12 planning perspective; what is the great virtue here?

13 MR. BISSCHOP: A. They are the first
14 indicator that if any operations are proposed in the
15 vicinity of those values that there may be effects of
16 operations on those values that need to be considered
17 in timber management planning.

18 Q. And, as I understand it - but we will
19 get into this later - is this the basis -- is this
20 value map the basis for the subsequent areas of
21 concern?

22 A. Exactly.

23 Q. Am I wrong, is it essentially an
24 information gathering process? It's a grid - I don't
25 want to use the word checklist, I appreciate you have

1 concerns about it - is this essentially a grid in which
2 a whole range of items are placed and forms your first
3 cut at analysis as to whether or not you have any
4 concerns that you should be taking into account?

5 A. That's correct. And, as Mr. Kennedy
6 indicated, the values map is very much a summary of
7 information. There would be additional details that
8 accompany that information that can't be portrayed on
9 the map itself. The map simply geographically
10 identifies where the values occur.

11 Q. Mr. Bisschop, I would like your
12 opinion, and I am going to direct it principally to
13 213, 214 and 215 as the place where these additional
14 items might go. Well, let's deal just for the purposes
15 of consistency with the terms and conditions.

16 So I draw your attention to page 5, to
17 term and condition No. 6 and imagine after (e) that
18 there was an additional item called (e)(i), and would
19 you have any objection to the following:

20 "Native interests..."

21 And it would include the following:

22 "Areas utilized for subsistence
23 activities, areas used for fuel wood and
24 saw logs, areas that may be acquired as
25 reserve lands, areas of historical and

1 cultural significance and graveyards and
2 burial sites."

3 Those items would be included under term
4 and condition No. 6 and would form a list of
5 information that you would be required or would acquire
6 in terms of the production of the value maps?

7 And, in your opinion, would you have any
8 difficulties with the inclusion of such a provision in
9 the terms and conditions?

10 A. I have no difficulty with some of
11 them.

12 Q. Okay.

13 A. I --

14 Q. Well, that's fine. I don't want to
15 get -- you know...

16 A. Well, I should qualify it in terms of
17 the ones I have some difficulty with.

18 Q. Okay, fine.

19 A. I question -- recognizing that there
20 are areas in which native interests do obtain fuel
21 wood, I question what value is there that could be
22 negatively affected by timber management operations in
23 such an area when the area is being used for fuel wood.

24 I think part of the understanding with
25 values map is that you are identifying values that you

1 are potentially concerned about affecting in some way
2 by timber management operations.

3 On the subjects of areas for subsistence
4 use, my concern there is one with really the
5 extensiveness of such areas. The values map is
6 predominantly oriented towards identifying features and
7 values on the landscape that have some site-specific
8 geographic dimension to them and, again, my concern is
9 that even in areas like that is there a potential
10 negative effect across the entire area that might be --
11 might fit into that particular category.

12 The others, areas of cultural
13 significance, I see readily incorporating into the
14 list. We have indicated on page 215, sites of
15 archaeological/historical significance. These are very
16 similar items.

17 Q. Okay, thank you. I won't go back
18 into it, I was simply going to refer, Mr. Bisschop,
19 again back to the District Fisheries Management Plans
20 Planning Manual, but we have already covered that.

21 If I could draw your attention to section
22 6 -- sorry, term and condition 6(f), Exclusions, and I
23 would go to the class assessment at page 104 in which
24 exclusions are identified, 104, at lines 6 through to
25 15.

1 And I note that you have added, perhaps
2 as an oversight, Cemeteries Act and burial grounds as
3 an area of exclusion. Are such areas to include, and
4 understood to include native cemeteries and burial
5 grounds? Do you see the point I am raising?

6 A. I see it. I can't be certain on
7 that.

8 Q. How do we clear this up? I have some
9 difficulty with a concept that it would only be
10 non-native cemeteries and burial grounds that would be
11 excluded and that native burial grounds would not be
12 excluded, so...

13 A. I have the same concern. I expect
14 that it would cover all.

15 MR. HUNTER: Perhaps Mr. Freidin could
16 provide us with a response to that at some stage.

17 MR. FREIDIN: I will advise you. And if
18 that is not case and it does not apply to them all, I
19 will advise you.

20 MR. HUNTER: If it does not apply to all
21 persons then you will advise me?

22 MR. FREIDIN: That's right.

23 MR. HUNTER: Thank you. It would make
24 for a very interesting Charter argument.

25 THE CHAIRMAN: I am not sure we need that

1 grief in this hearing, Mr. Hunter.

2 MR. HUNTER: No, Mr. Chairman.

3 Q. Mr. Bisschop and Mr. Kennedy, perhaps
4 you can help me with -- it may be in the materials and
5 if it is then I apologize, but I have three separate
6 questions, the theme is the same.

7 Assume that you have a forest management
8 agreement, assume that you are preparing a new timber
9 plan based on a scheduled renewal, can you create an
10 exclusion area which was not previously created in the
11 original FMA?

12 Is the question clear? You have an FMA,
13 you are now into the -- let's assume for the sake of
14 discussion, the second year of a scheduled -- the 5th
15 year, and you are going into your next five-year
16 planning exercise, can you include into that FMA an
17 exclusion area?

18 MR. KENNEDY: A. The terms may differ
19 but it is possible to withdraw an area from the
20 agreement.

21 Q. And that would be found where, in the
22 FMA, or in the -- I am trying to -- that's where I
23 don't...

24 A. I believe there is a clause in the
25 FMA agreement that allows for that.

1 Q. So that ability to establish that
2 exclusion area is run by the FMA, it is not run by the
3 class assessment or the timber management manual?

4 A. Well, okay, let's be quite clear
5 here. It is possible to -- I believe it is possible to
6 withdraw an area from the forest management agreement
7 which would be a separate item from -- determine the
8 land base on which you are going to practice the timber
9 management planning.

10 Q. Excuse me, I didn't follow that last
11 sentence.

12 A. It would be a separate item, a
13 separate process than that which is being done on where
14 you are going to produce a timber management plan for.
15 One is a legal agreement that we are talking --
16 speaking of.

17 Q. Yes, I appreciate that. That's the
18 FMA?

19 A. The FMA.

20 Q. Yes.

21 A. And the other being the preparation
22 of the management plan.

23 Q. Does the FMA contain in it a
24 provision which says the Crown may remove from the
25 area--

1 A. Yes.

2 Q. --an area of land?

3 A. Yes.

4 Q. And that is found in all FMAs?

5 A. I believe it is.

6 MR. FREIDIN: Those situations being
7 referred to, Mr. Hunter, as withdrawals, just so you
8 understand.

9 MR. HUNTER: Could I just have one
10 moment.

11 ---Discussion off the record

12 THE CHAIRMAN: Mr. Freidin, by virtue of
13 it being a withdrawal, it essentially means that the
14 activities cannot then take place on that withdrawn
15 area. Is that not the case--

16 MR. FLEET: That's right.

17 THE CHAIRMAN: --Mr. Bisschop?

18 MR. BISSCHOP: Yes, That's correct. If I
19 could, I could draw your attention to page 172 of the
20 Class EA which perhaps indirectly addresses this
21 subject in some way.

22 THE CHAIRMAN: Sorry, what page?

23 MR. BISSCHOP: Page 172, at lines --
24 well, actually beginning at line 17. We are speaking
25 here about amendments to timber management plans and

1 the various factors that a district manager considers
2 in terms of granting the amendment or -- and the
3 category of amendment that applies.

4 One of the considerations is whether the
5 required amendment is a response to the product of
6 another planning exercise and an example, starting at
7 line 22, 23 is, for example, the withdrawal of land from
8 the land base of the management unit for some other
9 use. It may be that timber management activities are
10 planned in the very area that is the subject of a
11 withdrawal, the plan would have to be amended to
12 indicate that those operations will not occur.

13 THE CHAIRMAN: What would be a simple
14 example of that, a park being established within an FMA
15 unit that was formerly governed by an FMA, the
16 government decides to throw a park in there, wants to
17 withdraw the land base from the FMA; is that --

18 MR. BISSCHOP: That's possible. I am not
19 sure how often that will happen in the future given the
20 park planning exercise that have gone on in the
21 province. Something as simple as, for example, a Hydro
22 line, transmission line, a quarry development,
23 something that's...

24 MR. FLEET: There is an example of a -- I
25 would describe it I guess as a floating withdrawal in

1 the Lac Seul FMA for the establishment of a native
2 reserve. And during the signing of the FMA, my
3 understanding is that there was not a clear
4 identification or the specific area where the reserve
5 was, but with respect to that, an honorarius sign for
6 agreement to the company, there was a withdrawal of an
7 area that simply had not yet been identified on the
8 grounds. It was taken out of the square miles of land
9 base and so forth.

10 I don't know if that's been settled yet
11 or not, but that's an example where they anticipated a
12 native reserve to be withdrawn.

13 MR. HUNTER: Q. My difficulty, Mr.
14 Bisschop, at page 172 is my -- well, obviously it's
15 lack of understanding and obviously I'm going to
16 address it.

17 That seems to be posed as a question. It
18 does not give me a lot of immediate comfort with
19 respect to the point that I had raised, but I
20 acknowledge, you know, you have identified that it has
21 been raised in the Class EA. I'm not sure that that's
22 sufficient in terms of the issue that I am raising.

23 MR. BISSCHOP: A. I indicated that this
24 was an indirect reference, if you will, to the concept
25 of withdrawals and I simply --

1 THE CHAIRMAN: Mr. Hunter, perhaps I am
2 not understanding your exact point, but if it is a
3 withdrawal from the area that had been planned for
4 possible timber management activities and it's a
5 withdrawal from the land base for some other purpose,
6 what is your particular concern?

7 MR. HUNTER: My particular concern is:
8 Where is the authority to do that, and we have heard
9 that it is in the FMA.

10 My next level of concern is: What
11 relationship, if any, exists between that authority,
12 that is -- which is essentially in a private contract,
13 and the requirements of the Class EA and ought the
14 Class EA address the issue of withdrawal of such lands?

15 We have a term and condition under 6,
16 sir, that says you can have exclusions. I'm trying to
17 find the linkages between that term and condition --

18 THE CHAIRMAN: I can understand your
19 concern over: Where does the legal authority to do so
20 reside, and how does it interface with the Class EA.
21 What I am having more difficulty in understanding is:
22 What is your concern with respect to the impacts that
23 might be visited upon your clients should the land base
24 be taken out of possible timber management activities?

25 In other words, this planning process is

1 concerned with timber management activities.

2 MR. HUNTER: Yes.

3 THE CHAIRMAN: If those can't occur
4 because it is out of the land base for some other
5 purpose, you would be looking to some other planning
6 process to worry about the impacts from that other
7 purpose; would you not?

8 MR. HUNTER: No, I think we are passing
9 you. I am concerned about how might a native community
10 seek to have lands withdrawn from a land base when you
11 are into the second, third and fourth renewals when you
12 have an existing FMA that does not acknowledge or
13 recognize that specific area for exclusion or the
14 possibility of it. So I am looking at it from a
15 completely different perspective.

16 THE CHAIRMAN: So you want to be the
17 perpetrator of the process that withdraws an area of
18 land from the FMA land base?

19 MR. HUNTER: That's correct.

20 THE CHAIRMAN: Okay.

21 MR. HUNTER: Yes.

22 MR. FREIDIN: Mr. Chairman, I am just
23 wondering--

24 MR. HUNTER: That's the issue.

25 MR. FREIDIN: --if I understand the

1 concern, really the concern is whether in fact
2 operations should occur in an area because of a concern
3 that it might have negative impacts on his client.

4 It seems to me that the area of concern
5 planning process provides for that concern to be
6 addressed. It might, as we have heard, result in the
7 identification of a reserve which is an area where no
8 timber operations will occur.

9 THE CHAIRMAN: But not necessarily
10 removed from the land base?

11 MR. FREIDIN: Right. But whether it is
12 removed from the land base by way of a withdrawal or a
13 clause in the FMA agreement will not change whether or
14 not -- the situation his clients will be in vis-a-vis
15 whether they will be protected from potential timber
16 management operations. And if I am correct on that, do
17 we have to get into a discussion as to how it might be
18 dealt with through another legal mechanism.

19 The concern is: Will the operations be
20 prevented or modified, or can they be prevented or
21 modified so that his client's concerns are addressed,
22 not whether it can -- if it could be done in one place,
23 then I don't think we should spend time worrying about
24 whether it should also be done through some other
25 mechanism as well.

1 THE CHAIRMAN: Well, with the possible
2 exception, Mr. Freidin, that doing it through one
3 mechanism may not have the permanence, if I might put
4 it that way, of doing it through another.

5 MR. HUNTER: Thank you, Mr. Chairman.

6 Q. The same question applies - if I have
7 to repeat it I will - with respect to Crown management
8 units and with respect to company management units;
9 is that clear, Mr. Bisschop or Mr. Kennedy?

10 In other words, if you have a Crown
11 management unit, how are exclusions created, are they
12 created in the agreement itself or is there another
13 mechanism?

14 MR. BISSCHOP: A. They are not created.
15 Exclusions -- at the time a plan is prepared, we simply
16 identify those lands that through some other exclusive
17 designation to another use are not available for timber
18 management purposes. From time to time there may be
19 future exclusions.

20 Q. How would those operate? Do those
21 agreements indicate that exclusions can be created or
22 lands can be withdrawn for the purposes of timber
23 management planning?

24 MR. KENNEDY: A. Are you talking of
25 Crown and company management units?

1 Q. Yes, yes. You indicated that in the
2 FMA there is a provision which allows for future
3 withdrawals of land. I'm asking that in Crown
4 management units, what is the basis that would allow
5 for the future withdrawal of land?

6 A. I think what you are asking -- or,
7 sorry, in simplest form, there is a change in ownership
8 and this process is dealing with timber management
9 activities on Crown land and if there was a change in
10 ownership to recognize a new reserve area, those areas
11 would not be included as part of a timber management
12 plan.

13 Q. So you can then in a renewal in a
14 Crown management unit --

15 A. It would be possible to remove an
16 area.

17 Q. Okay.

18 A. The way that would happen is it would
19 become -- it would be removed from production as being
20 not part of the Crown land base. It would show up in
21 one of the ownership tables that are assembled during
22 the assembly/analysis of background information stage
23 of preparing the plan; so at the beginning of the
24 planning preparation.

25 Q. Okay.

1 THE CHAIRMAN: But does that occur, Mr.
2 Kennedy, when the Crown used to formally sell off some
3 Crown lands?

4 MR. KENNEDY: Yes, it would also occur at
5 that time. For instance --

6 THE CHAIRMAN: Or lease them off to
7 cottagers and things like that?

8 MR. KENNEDY: Yes. In the case of some
9 land use designation, such as cottage lots, it may be
10 that the timber rights, if you will, are given up at
11 the same time with that lease and, as such, there would
12 be an adjustment to the management unit to reflect
13 that.

14 So that the land base that is going into
15 the maximum allowable depletion calculations reflects
16 what is available for the production of timber.

17 MR. FLEET: And in the Timber Management
18 Planning Manual, Mr. Chairman, on page 55 and 56, there
19 is a specific table to track the land that comes out of
20 the specific FRI ownership that would enable us to
21 conduct timber activities, particularly on page 56, the
22 instructions on the back:

23 "This table can be completed for specific
24 land ownerships (e.g. parks, patent land
25 and Indian reserves)."

1 And it's where we would keep track of the
2 amount the land sort of falling out of timber
3 production to other uses.

4 MR. KENNEDY: And, Mr. Hunter, to
5 complete the answer, you had also asked about company
6 management units. If that situation arose, it would
7 then be contemplated to withdraw the area from a
8 company licence that may be existing on the management
9 unit.

10 MR. HUNTER: Q. Excuse me, Mr. Kennedy?

11 MR. KENNEDY: A. There would be a
12 withdrawal of the area from the company licence on a
13 company management unit.

14 Q. I think, Mr. Bisschop, Mr. Kennedy,
15 if you could go to term and condition No. 9. And we
16 have covered this in part, Mr. Bisschop, when we
17 discussed issues and problems -- or problems and issues
18 in relationship to the District Management Planning
19 Manual for Fisheries.

20 I think we are going to have to go back
21 through it a little bit. If you could go back to the
22 planning manual for fisheries, and I would draw your
23 attention to page 28 and 29.

24 THE CHAIRMAN: Mr. Hunter, I have to make
25 a phone call for about five minutes. Would it

1 interrupt your cross-examination?

2 MR. HUNTER: No. I think in fact it
3 would be appropriate because -- well, if I could take
4 one minute and I can review my notes, I think we may in
5 fact have covered this issue in a previous
6 cross-examination and, if so --

7 THE CHAIRMAN: Well, why don't we take 10
8 minutes at this time and then we will come back.

9 MR. HUNTER: Okay.

10 THE CHAIRMAN: Thank you.

11 ---Recess taken at 2:45 p.m.

12 ---On resuming at 3:10 p.m.

13 THE CHAIRMAN: Thank you. Be seated,
14 please.

15 MR. HUNTER: Thank you, Mr. Chairman.

16 Q. Mr. Bisschop, Mr. Kennedy, if you
17 could turn to page 7 of the terms and conditions and go
18 to term and condition 13. I have a series of questions
19 which go to 13(a), (b), and (c) and they are
20 essentially the same and they go to your
21 decision-making process, and I will start with 13(a)
22 and there is a phrase:

23 "There shall be an initial
24 determination..."

25 My question is: Who makes that

1 determination pursuant to 13(a), how is that decision
2 made, and is it documented?

3 So perhaps if we could just quickly run
4 through those provisions. So with respect to 13(a),
5 who makes that determination?

6 MR. BISSCHOP: A. The planning team.

7 Q. The planning team, okay. And what
8 criteria would be used in the making of that
9 determination?

10 A. I'm not sure it's a question of
11 criteria as much as it is an examination of the value,
12 a consideration of the potential negative effects of
13 timber management operations on that value and
14 direction provided in the variety of provincial
15 guidelines and resource environmental manuals that
16 indicate that the -- the direction is provided in those
17 guidelines which indicates the measure of protection
18 that would be required to protect a value resulting in
19 a reserve decision.

20 The decision is documented as a reserve
21 decision, as any decision in the planning of areas of
22 concern would be documented.

23 Q. Let me just pick up on one key point.
24 In the delineation of the identified value which is in
25 13(a), you have your -- in terms of identifying the

1 area of concern, are the values identified on the
2 values map and requirements under provincial guidelines
3 brought into play at that particular time to define an
4 area of concern?

5 I am just following on what you have just
6 said in relationship to the determination. There
7 should be a determination, identify the values map, and
8 then I believe you said the provincial guidelines; is
9 that correct?

10 A. You have the area selected for
11 operations, you have the values map, a superimposition
12 of the two indicate whether you have a value in an area
13 where there will be operations, so you identify an area
14 of concern.

15 In the decision-making about: How are
16 you going to protect that value, you will use -- the
17 planning team will make use of direction that's
18 provided in the variety of provincial guidelines and
19 resource environmental manuals to assist in making the
20 decision.

21 And in the case of a reserve decision,
22 which item 13(a) addresses, that decision would be
23 based in large part on the direction that's provided in
24 those guidelines and the decision would be documented
25 in the area of concern documentation.

1 Q. Okay. Can you have an area of
2 concern -- is it the protection of the reserve which is
3 determined by the guidelines, or the determination of
4 the reserve which is determined by the guidelines? I
5 am trying to handle two -- okay, go ahead.

6 A. The protection of the value is
7 addressed in the variety of guidelines. The actual
8 areal extent of the protection that's required is --
9 the guidelines provide direction on that as well;
10 for example, take the fisheries guidelines where a
11 combination of fisheries value and a particular slope
12 dimension has an associated, for example, 60 metre, 90
13 metre or 120-metre reserve prescription accompanying
14 it.

15 Q. So the guidelines are not crucial in
16 the determination of the area of concern, but they are
17 with respect to the protection once it has been
18 identified; is that...

19 A. The guideline --

20 Q. If it's not, then say so. I am just
21 trying to understand conceptually the --

22 A. The reason I hesitate a bit is that
23 the fisheries guidelines do provide direction in terms
24 of identifying the geographical extent of the area of
25 concern to begin with.

1 Q. All right.

2 A. And then there is further direction
3 about what prescriptions apply within an area of
4 concern of that kind of dimension, direction on
5 optional prescriptions.

6 THE CHAIRMAN: But that's the only
7 guideline, Mr. Bisschop; isn't it, that actually
8 prescribes the area extent of a reserve; all the others
9 provide for protection of the value which may or may
10 not involve a specific reserve, is that...?

11 MR. BISSCHOP: That's right. I think
12 perhaps Mr. McNicol could speak to this better. I
13 think some of the other resource environmental manuals,
14 for example, dealing with osprey nests and that sort,
15 deal with some dimensions on reserves and then what can
16 happen beyond that reserve.

17 THE CHAIRMAN: And you are using reserve
18 in that sense the same as buffer?

19 MR. BISSCHOP: I am using it as a
20 prescription. I don't use the word buffer.

21 MR. HUNTER: Q. Just again
22 clarification, Mr. Bisschop. Do all items on the
23 values map become areas of concern?

24 MR. BISSCHOP: A. If there are -- if the
25 area in which the value occurs is selected for

1 operations--

2 Q. Yes?

3 A. --yes, an area of concern normally
4 would be identified.

5 MR. FREIDIN: Just so there is no
6 confusion - and I'm sorry to interrupt - but we went
7 through the evidence before to distinguish between a
8 value and an area of concern created to protect the
9 value. And when you say -- the question was: Do all
10 values on a values map become areas of concern.

11 THE CHAIRMAN: He is your witness, Mr.
12 Freidin.

13 MR. FREIDIN: I owe Mr. Kennedy 25-cents.
14 I will deal with it in re-examination.

15 MR. HUNTER: Oh, well.

16 Q. Mr. Bisschop, if we go to 13(b) and
17 13(c) -- let's go to 13(b) and hopefully we won't get
18 bogged down again. Who makes the determination
19 pursuant to 13(b); is it the planning team?

20 MR. BISSCHOP: A. Again, the planning
21 team.

22 Q. The planning team, okay. 13(c), who
23 makes the determination?

24 A. Again, the planning team.

25 Q. The planning team. Who conducts the

1 environmental analysis?

2 A. The planning team.

3 Q. The planning team. Who provides the
4 rationale for the selection of the preferred
5 prescription?

6 A. The planning team.

7 Q. The planning team.

8 A. And, of course, I should add the
9 public consultation dimension of the planning process
10 as well where the information is provided at
11 information centres for public review, also through the
12 review of the draft plan.

13 Q. So, therefore, when we get involved
14 in a review of the terms and the conditions of the
15 process we ought to be thinking about how they should
16 interact with the provisions under section 13 in terms
17 of information being provided?

18 A. In terms of specifically operations
19 in areas in which there is a particular interest.

20 Q. Sure.

21 A. Yes.

22 Q. Okay. If we could go to 14.

23 MR. HUNTER: I am jumping ahead a little
24 bit, Mr. Chairman, to the last part of the
25 cross-examination which establishes those areas in

1 which guidelines -- sorry, those guidelines which must
2 be taken into account.

3 Q. And I am curious, Mr. Bisschop,
4 pursuant to term and condition 14, that you have only
5 identified timber values, timber management -- sorry,
6 tourism, moose habitat and fish, and you say:

7 "... (as well as additional provincial
8 guidelines that may be developed from
9 time to time)..."

10 And when I read that it seemed to me that
11 you are precluding the other provincial guidelines that
12 have already been established.

13 "... shall be taken into account..."

14 MR. BISSCHOP: A. There are no other
15 provincial guidelines that are yet...

16 Q. So it is intended that it is only
17 provincial guidelines that will be dealt with under
18 section 14 -- term and condition 14?

19 A. That's right.

20 Q. Okay.

21 THE CHAIRMAN: That does not include
22 provincial policies that may be in effect like a parks
23 policy, for instance?

24 MR. BISSCHOP: That's correct, Mr.
25 Chairman. It refers -- if I could jump ahead to term

1 and condition No. 40.

2 MR. HUNTER: Q. That's right, yes.

3 That's what I am having trouble understanding, is the
4 relationship between the two.

5 MR. BISSCHOP: A. On page 18, it refers
6 to Items No. (vi), (vii) and (viii) which are existing
7 provincial guidelines, the three that we have talked
8 about extensively.

9 If you go back to condition No. 14, the
10 bracketed portion of that condition would relate to
11 Items (ix) and (x) in condition 40 when they are
12 finally produced.

13 Q. So (ix) and (x) then are the
14 while-tailed deer habitat and the ubiquitous cultural
15 and heritage resources guideline; is that correct?

16 A. That's correct. Those are not yet
17 finalized provincial guidelines.

18 Q. Okay, so I understand now. So the
19 additional provincial guidelines will be (ix) and (x)?

20 A. That's right. And I think the term
21 and condition is worded -- term and condition 14,
22 although there are no other provincial guidelines
23 contemplated, it is worded so that if there ever were
24 those guidelines would be -- the use of those
25 guidelines would be used in timber management planning

1 in areas of concern.

2 Q. All right, thank you. At least I
3 understand the provision, I'm not sure -- well...

4 If we could go now to 21, Mr. Bisschop,
5 at page 10, okay?

6 A. Yes, I have it.

7 Q. At what stage in that review is the
8 determination made that the proposed plan adequately
9 reflects and implements provincial policies with
10 respect to native communities?

11 I am referring now to policies developed,
12 particularly by ONAD specifically, and I think it is
13 identified in Exhibit 5B, the letter from Mr. Scott.

14 I use that only as an example, where in
15 that process can one look to the Ministry's internal
16 review to ensure that native policies are being
17 reflected in the timber management plans?

18 MR. FLEET: A. I don't know if you
19 looked in a timber management plan review that you
20 would see a clear statement to the effect that it
21 abides by native policies or any other policies.

22 But by the signature page, by the
23 district manager's recommendation for approval of the
24 timber management plan that implies consistency with
25 provincial policy and then subsequently the approval of

1 both the regional director and the Director of the
2 Timber Sales Branch, that indicates that the plan has
3 been written in accordance with--

4 Q. Provincial policy?

5 A. --provincial policy, local plans and
6 so forth.

7 Q. But the first responsibility for that
8 is at the district level; is that correct, in terms of
9 the review process?

10 I am speaking now strictly in
11 relationship to the internal review.

12 A. Yes, that would be the first level of
13 review on the first stage, yes.

14 Q. And would those issues be checked off
15 at the provincial level?

16 A. Mr. Hunter, there is really no
17 checking off function with respect to plan review and
18 approval. The evidence that we have led is that there
19 is some direction provided with respect to plan review
20 and approval both through a draft provincial procedure
21 and three draft bulletins; one for district, one for
22 region, and one for main office. Perhaps if I could
23 refer you in 813A page 264.

24 Q. Mm-hmm.

25 A. The paragraph titled:

1 Recommendations, and that is referring to the district
2 manager's signature on the title page of the timber
3 plan. Under point 3:

4 "The district manager's signature
5 indicates that point 3 of the plan is
6 consistent with local plans."

7 And that should read policies and in a
8 more general sense than local. Okay. So local plans
9 policies and guidelines, for example, consistent with
10 provincial guidelines, et cetera.

11 Q. Thank you.

12 A. So that indicates...

13 Q. So you are saying that -- so you are
14 indicating that that function -- that recommendation
15 should state:

16 "Is consistent with local and provincial
17 plans policies and guidelines"?

18 A. That signature on a timber management
19 plan, when it's received by the region or by main
20 office, indicates to the regional and main office
21 people that, saving and excepting the subsequent
22 preliminary list of required alterations that might
23 accompany that signature, the plan is consistent.

24 THE CHAIRMAN: Mr. Fleet --

25 MR. HUNTER: Q. I want to be very...

1 THE CHAIRMAN: If I might interrupt, Mr.
2 Hunter.

3 Mr. Fleet, it would make sense, I
4 suppose, if policies which are not essentially timber
5 related or adherence to those policy were checked by
6 someone other than the district manager, for instance
7 by someone, for example, than the Ontario Native
8 Affairs Directorate vis-a-vis native affairs policies,
9 but is what you are saying essentially that all of
10 these other policies which may be non-timber oriented
11 in nature are sent to all the district managers and
12 they keep all these various policies in a big book and
13 when the plan comes floating in they somehow either
14 have knowledge of all these policies or flip through
15 and check that these policies are being adhered to
16 vis-a-vis the plan?

17 I mean, wouldn't it normally be the case
18 that the institution or the agency which has primary
19 responsibility for the policy should be the one that
20 checks adherence to those policies vis-a-vis some other
21 agency which has primary responsibility in another
22 area?

23 MR. FLEET: I think, for the purposes of
24 this discussion and with respect to the policies we are
25 talking about -- first of all, it's probably not a big

1 book, it's more like a big shelf in the districts I
2 have been in, but they are 99 per cent Ministry
3 internal policies and if there were other agency
4 policies it would be -- that would require checking,
5 there are the direct notices and the opportunities in
6 the public review of the draft plan for those agencies
7 to check.

8 But by and large the checking is with
9 respect to Ministry policy -- Natural Resources policy
10 with respect to other branches and with respect to the
11 Timber Branch as well.

12 THE CHAIRMAN: So you are saying
13 effectively that the check is not valid but is
14 meaningful, if I might put it that way, when it
15 involves the Ministry's own internal policies but may
16 not be as stringent, or whatever other word we can use,
17 if it involves non-MNR policies specifically and
18 another agency's whose policy it is hasn't had an
19 opportunity really of formally checking the plan?

20 MR. FLEET: Well, we have provided them
21 with the opportunity to formally check a plan, they are
22 on our respective management unit mailing lists.

23 THE CHAIRMAN: But they don't sign off or
24 anything. You have no idea whether they have checked
25 it?

1 MR. FLEET: They don't have any check off
2 responsibility from the point of view of adding their
3 signature to the front of the timber management plan.

4 THE CHAIRMAN: Right.

5 MR. FLEET: In fact, we have probably
6 gone the opposite direction.

7 MR. HUNTER: Mr. Chairman, I think you've
8 anticipated --

9 Q. When you said check off, are timber
10 management plans sent to ONAD now for them to check
11 off, the Office of Native Affairs Directorate, are they
12 sent there now for their review to check off and
13 whether -- see what the policy is?

14 MR. FLEET: A. No, Mr. Hunter. What we
15 do with our timber management plans is we will send
16 other stakeholder groups and parties that have
17 indicated an interest in the particular timber
18 management plan, we will give notice that the plan is
19 available at a specified location, usually the district
20 office, for a 30-day period for review, specifically
21 with respect to plan review.

22 They have also been given similar notices
23 with respect to the information centres and plan
24 preparation. So, for example, taking ONAD for example,
25 they would be given a direct notice if they had

1 indicated interest in a particular management plan.

2 Perhaps Mr. Bisschop with respect to term
3 and condition - I am not familiar with - is there a
4 specific requirement to send it to ONAD?

5 MR. BISSCHOP: A. There is no specific
6 requirement to send the plan to any government agency
7 other than Ministry of the Environment.

8 MR. HUNTER: I think, Mr. Chairman, you
9 anticipated the area that we were trying to get to. I
10 think we have not, in our own minds, resolved whether
11 or not it is advisable or best procedure to have such
12 plans forwarded to ONAD. I think we basically feel
13 it's not the best way to proceed.

14 On the other hand we are, under 21, quite
15 concerned in our view about the lack of specificity in
16 that provision to ensure that there is some check off
17 or some linkages which ensures that native concerns
18 from a provincial policy point of view are taken into
19 consideration.

20 And I don't take much comfort from the
21 witness' comments with respect to page 264 in terms of
22 what the district manager does or doesn't do. So I
23 think I will leave that because that is an area where
24 we are unresolved in our own mind is the best way to
25 deal with it, but...

1 THE CHAIRMAN: It's got to be a practical
2 solution.

3 MR. HUNTER: Yes, it's got to be doable.

4 THE CHAIRMAN: If one is going to be
5 devised by way of a condition, because there is no
6 sense sending them to the agencies only to find out
7 they haven't got the personnel, staff, expertise or
8 whatever--

9 MR. HUNTER: That's right.

10 THE CHAIRMAN: --to check anything off
11 anyway.

12 MR. HUNTER: That's right.

13 MR. FLEET: Mr. Hunter, with respect to
14 term and condition 21 that is really dealing with the
15 MNR internal --

16 MR. HUNTER: Q. Excuse me?

17 MR. FLEET: A. With respect to term and
18 condition 21, that term and condition is really dealing
19 with the MNR internal review which is meant to be
20 strictly Ministry of Natural Resources, and then the
21 subsequent terms and conditions, No. 22 for example,
22 talks about moving into the public review element of
23 timber management plan review.

24 Q. Yes. Mr. Fleet, we are particularly
25 concerned with the development of terms and conditions

1 which would require, at presumably the district level
2 or possibly the regional level, a very clearly defined
3 check off system to ensure that MNR has addressed
4 provincial policy with respect to native people in this
5 area.

6 How we do that and what is the best way
7 of trying to approach that subject, we just don't know
8 at this time. I don't believe that 22 answers that
9 issue either.

10 Could we go to the bump-up provisions,
11 25.

12 MR. HUNTER: And, Mr. Chairman, I
13 appreciate as I read the transcripts that considerable
14 discussions took place around that subject, so I will
15 try to avoid extensive discussion about it, but I am
16 sure you can appreciate this is an area of some concern
17 to us.

18 Q. And I think, Mr. Bisschop, if you
19 could go to transcript 147 at page 25260.

20 MR. HUNTER: I might have to borrow your
21 copy. I think Ms. Pawlowski is going to the reading
22 room. I thought we had a copy.

23 MR. FREIDIN: What page?

24 MR. HUNTER: 25260. If I could just --

25 MR. FREIDIN: Don't read my notes.

1 MR. HUNTER: I won't read your notes.

2 Q. And without reiterating the
3 discussions that occurred between yourself and the
4 Chair, it seemed to me that you took the position that
5 said it would - correct me if I'm wrong - that the
6 basic position of the Ministry was that their process
7 was -- the Chairman said:

8 "So, in effect, in almost every case
9 - there may be exceptions - you would be
10 recommending against bump-up on the basis
11 that the timber management planning
12 process had been followed and that the
13 Ministry had acted reasonably in trying
14 to address all of the public's concerns?"

15 MR. BISSCHOP: Yes. In essence, I am --

16 THE CHAIRMAN: Is that what you are
17 saying?

18 MR. BISSCHOP: Yes. And, in essence,
19 what I am saying is: Minister of the
20 Environment, you have the position of the
21 requestor, you have our position, they
22 are fundamentally opposed."

23 MR. HUNTER: Q. So I understand your
24 position to be that the planning process is so adequate
25 or perfect that the Ministry would be put in the

1 position where they would just automatically have to
2 refuse a bump-up; is that...

3 I am trying to really understand from a
4 public policy point of view how you can be so sure that
5 your Ministry would oppose bump-ups?

6 What is the basis of that judgment as a
7 planner, for that judgment; is there anything more than
8 that which is stated in response to the Chairman?

9 MR. BISSCHOP: A. I don't believe there
10 is a lot more to add. We contend that we apply the
11 process, we do everything we can to address the concern
12 that is being raised, there is, as I have indicated, a
13 fundamentally opposing positions, we leave it to the
14 Minister of the Environment to make his decision on the
15 basis of those two positions.

16 Q. Okay. Could you go to the Class EA
17 and 177 and 178 and at the bottom, line 32 to 36, and
18 then at 178, 179 and 180.

19 What I would particularly draw your
20 attention to, if I might, are the provisions on page
21 179. Oh sorry, let's go back. We will go back to the
22 bump-up provisions, 32 to the top of 178:

23 "In the preparation of a timber
24 management plan or a major amendment to a
25 previously approved or proposed timber

1 management operations may cause
2 significant public controversy or may be
3 perceived to cause significant adverse
4 environmental impacts."

5 Is it your view that the preparation of a
6 plan will not cause significant public controversy or
7 that there may not be perceptions that there will be
8 adverse environmental impacts today as distinct from
9 when the Class EA was prepared?

10 A. No, I don't think there is a change
11 in view.

12 Q. Well, which prevails, I am trying to
13 understand, is this a question of substance or turf?
14 Are you saying there still may be substantial public
15 controversy with respect to a particular plan and there
16 still may be significant impacts, but that doesn't
17 matter to you, that's MOE's problem?

18 Assume as a question of fact that there
19 was a lot of controversy over a particular plan and
20 that there may in fact be environmental impacts, is the
21 Ministry saying, according to your evidence last week,
22 that notwithstanding that we would not recommend a
23 bump-up, or are you saying that neither of those or
24 either of them -- neither of them could occur?

25 A. They could unquestionably occur.

1 Q. Fair enough, okay.

2 A. The --

3 Q. And if they did occur, you would
4 still -- your Ministry would still recommend against a
5 bump-up?

6 A. I think what we would -- perhaps to
7 say that we would always recommend against the bump-up
8 is perhaps going too far. I think we would produce to
9 the Minister of the Environment all documentation to
10 indicate how we have addressed the concern.

11 We fully recognize that when a request
12 reaches the Minister of the Environment that ultimately
13 the Minister of the Environment will make the decision.
14 We are in the position of providing information to the
15 Minister to assist him in making that decision and
16 ultimately, if he were to grant the request, we would
17 have to live with that and produce the individual
18 environmental assessment.

19 THE CHAIRMAN: Mr. Bisschop, I can't
20 remember the legislation offhand, but does the Minister
21 of the Environment need the consent of Cabinet or is
22 this one of the decisions he makes entirely on his own?

23 MR. FREIDIN: To grant an individual
24 environmental assessment?

25 THE CHAIRMAN: Yes. And if it's the

1 former, where is the Minister of Natural Resources at
2 the Cabinet table when that decision is being made?

3 MR. BISSCHOP: Again, Mr. Chairman, the
4 legislation currently doesn't deal with the subject of
5 bump-up because the legislation doesn't deal with the
6 subject of class environmental assessments.

7 THE CHAIRMAN: Fair enough.

8 MR. BISSCHOP: I'm afraid I'm not
9 positive at the moment whether it's exclusively the
10 Minister of the Environment's decision.

11 THE CHAIRMAN: Many of his decisions, as
12 you are probably aware, are with the consent of
13 Cabinet. They may be initiated by him, but it's not
14 solely within his jurisdiction to make an unassisted
15 decision and there is sort of a tricky area here when
16 the decision involves (a) another sister Ministry, as
17 well as a sister Cabinet Minister.

18 MR. BISSCHOP: Yes, and I would expect
19 that Cabinet --

20 THE CHAIRMAN: I was careful with the
21 gender. I think I got it right.

22 MR. BISSCHOP: I would expect that
23 Cabinet deliberations certainly would be involved in
24 providing that consent to the Minister of the
25 Environment's decision.

1 THE CHAIRMAN: Well, I guess the
2 perception is, you know, how independent is that
3 decision on the part of the Minister of the
4 Environment?

5 MR. BISSCHOP: I certainly can't answer
6 that.

7 THE CHAIRMAN: No, nobody can, but...

8 MR. HUNTER: Well, there is another
9 interesting question that I am sure in some time we
10 will find the time and the energy to debate; and, that
11 is, without the consent of the Ministry of the
12 Environment can this Board direct, pursuant to terms
13 and conditions, "bump-up" procedures which
14 theoretically could fetter the Minister?

15 THE CHAIRMAN: Neat question.

16 MR. HUNTER: So, therefore, I am not sure
17 how far I want to get involved with the specific
18 provisions, sir, but I am genuinely intrigued by Mr.
19 Bisschop's opinion as reflected in the transcript with
20 respect to this particular area. I just want to
21 perhaps pursue that a little further.

22 MR. MARTEL: Fetter which minister?

23 MR. HUNTER: Pardon me?

24 MR. MARTEL: Fetter which minister?

25 MR. HUNTER: MOE.

1 MR. FREIDIN: I think the evidence of the
2 Ministry of Natural Resources to this point in time is
3 that it is not recommending any criteria for the
4 Minister of the Environment on the basis that it is for
5 the Minister of the Environment to exercise his or her
6 discretion in a reasonable way. So I'll make that
7 clear at this particular point in time.

8 MR. HUNTER: Well, I think with respect
9 to the procedures that the ministry has outlined, it
10 says:

11 "The Ministry of Environment shall
12 provide copies of a request and any
13 related correspondence to MNR."

14 And then under 25(c) it identifies the
15 parties who are going to be involved in this
16 conversation and conveniently excludes the party who
17 brought or may have brought the original application.

18 THE CHAIRMAN: And don't forget, Mr.
19 Hunter, there is an EACC process that is intertwined in
20 there where the Environmental Assessment Advisory
21 Committee would likely have the request for a bump-up
22 referred to it and may well hold a public hearing on
23 that request to advise the Minister of the Environment
24 who is not obliged, as I understand it, to follow that
25 advice.

1 MR. HUNTER: Yes, sir. I won't pretend
2 to --

3 THE CHAIRMAN: I guess the neat question
4 is: Who attends even before that EACC proceeding, is
5 MNR represented there, for instance, opposing a
6 request?

7 MR. HUNTER: I won't pretend to be able
8 to even try to address those issues now, but I think
9 there is, from our perspective, a very substantial
10 concern there.

11 MR. FREIDIN: I am just wondering if you
12 could just for my benefit repeat the neat question that
13 you posed.

14 THE CHAIRMAN: Can the Board impose
15 criteria regarding bump-up as part of its decision
16 which might, in effect, fetter the discretion of the
17 Minister of the Environment and/or with the consent of
18 Cabinet, if that is the case, in making his decision?

19 MR. FREIDIN: Thank you.

20 THE CHAIRMAN: Can we in effect -- well,
21 can we fetter the Minister's unfettered discretion, so
22 to speak.

23 MR. HUNTER: I won't --

24 THE CHAIRMAN: Was that the question?

25 MR. HUNTER: Yes. The other dimension is

1 the specific provisions which say can you determine who
2 the -- sorry, can the Board determine who the Minister
3 shall send materials to as distinct from anyone else.
4 But that I think is another...

5 THE CHAIRMAN: Well, the part of this
6 which is quite sort of hazy, if I might put it that
7 way, is the fact, as Mr. Bisschop states, it is not
8 part of the environmental assessment legislation per
9 se; it is an area, as I understand it, that has been
10 put forward for amendments to the Act in the EA PIP
11 process either Phase 1 or suggested for Phase 2 of that
12 process and that is probably where you are going to
13 find eventually, Mr. Hunter, directions as to who gets
14 served with notice of bump-up, who takes part in that
15 exercise, et cetera, when it gets finally addressed and
16 changes to legislation.

17 But where you stand now I think is
18 speculation on the part of most of us, and certainly
19 not delineated by legislation, as I understand it.

20 MR. HUNTER: Okay. I was just refraining
21 from -- Mr. Freidin and I were exchanging in some
22 pleasantries over the subject.

23 Q. If I might, Mr. Chairman, and Mr.
24 Bisschop, draw your attention to page 179, draw to your
25 attention - again, I won't read the whole area into the

1 transcript - but I am genuinely intrigued by what I
2 feel is a substantial shift in position and policy.

3 "A party, government, interest group,
4 persons with a concern..."

5 And this is the procedure for the
6 bump-up:

7 "The procedure for a submission of a
8 bump-up request is as follows:"

9 The party may bring would bring the
10 concern to MNR's attention, there would be presumably
11 discussions with the Ministry. If the concern is not
12 resolved, the Ministry could voluntarily prepare an
13 individual assessment for the plan or the party can
14 request that MNR initiate a bump-up.

15 You then have other provisions which
16 indicate -- report triggering mechanisms for the
17 Minister of the Environment.

18 My question, Mr. Bisschop, is: Do those
19 provisions from 1 through to - well, particularly
20 Sections 1 and 2, 3, do they remain; are they to be
21 part of the bump-up provisions?

22 THE CHAIRMAN: Excuse me, one moment, Mr.
23 Hunter. Just on that same point.

24 If MNR voluntarily prepares an individual
25 EA, as you have stated at line 7 on page 179, where do

1 they get the jurisdiction to do that?

2 They are not requesting a bump-up, the
3 Minister of the Environment hasn't ordered an
4 individual EA, how do you voluntarily agree to prepare
5 an environmental assessment, and I assume what you mean
6 by those terms is under the Act; is that the case?

7 MR. BISSCHOP: That's right.

8 THE CHAIRMAN: What triggers you falling
9 under the Act when the activity is covered by a Class
10 EA? How do you get out from under the EA voluntarily
11 without being designated in so to speak, or designated
12 up to an individual environmental assessment by the
13 Minister?

14 MR. BISSCHOP: I would see it, Mr.
15 Chairman, as the proponent chooses the course of action
16 to take for a particular project to meet the
17 requirements of the Environmental Assessment Act.

18 THE CHAIRMAN: By taking yourself out
19 from under the Class EA approved activities? We are
20 assuming we are dealing with an activity which is the
21 subject of a Class EA?

22 MR. BISSCHOP: Yes, just as one would
23 seek an exemption from the Act, one could seek to deal
24 with a project individually under the Act in effect.

25 THE CHAIRMAN: Just a moment. Would you

1 need the consent of the Minister of the Environment for
2 you to do that, because wouldn't he have to fulfill his
3 other duties under the Act such as institute a
4 government review and make sure the Environmental
5 Assessment Branch shepherds the application through and
6 a project coordinator is appointed and all these other
7 things?

8 MR. BISSCHOP: I am trying to think of
9 how it was approached for the only example I know of,
10 which I am sure all of you are aware of, the Red
11 Squirrel Road situation where the Ministry voluntarily
12 chose to, in effect, take that proposal out from under
13 the exemption and seek specific approval for that road
14 project--

15 THE CHAIRMAN: And did you receive--

16 MR. BISSCHOP: --through an individual
17 EA.

18 THE CHAIRMAN: --the consent from the
19 Minister of the Environment to do that?

20 MR. BISSCHOP: I don't know. I expect
21 that it was a -- because of the controversy in that
22 situation, I expect --

23 THE CHAIRMAN: I am sure he consented in
24 that particular case.

25 MR. BISSCHOP: He consented readily.

1 THE CHAIRMAN: But...

2 MR. BISSCHOP: It raises -- again, Mr.
3 Chairman, I think it raises an interesting legal
4 question around this subject of bump-up.

5 THE CHAIRMAN: I don't have the answer.

6 MR. BISSCHOP: I certainly don't.

7 MR. COSMAN: Mr. Chairman, I am going by
8 memory and I don't have my finger on it, but my
9 recollection is that certain Class EA documentation
10 themselves provide the proponent with that right; so
11 it's not something that is taken out from the Class EA,
12 but it is something that is provided within the Class
13 EA Document itself.

14 MR. HUNTER: Exactly.

15 THE CHAIRMAN: Well, if that is the case,
16 then there should be the specific provision within the
17 Class EA, including such a provision in this one.

18 MR. FREIDIN: In this case a provision
19 that the proponent might in fact initiate that on their
20 own.

21 THE CHAIRMAN: That's right.

22 MR. FREIDIN: I think that was always the
23 case.

24 THE CHAIRMAN: Which again goes against
25 Mr. Bisschop's earlier statement that there wouldn't

1 many circumstances under which the Ministry itself -- I
2 think I asked that question at some point earlier in
3 the proceedings, and he indicated that no, they
4 wouldn't.

5 MR. FREIDIN: That's right, but he
6 didn't, I think with respect, say that under absolutely
7 no circumstances would the proponent never initiate its
8 own.

9 I think he has indicated that in fact he
10 wouldn't indicate in advance or identify the situations
11 in advance where that would happen. I don't think he
12 said that the Ministry would preclude under any
13 possible circumstances as yet undefined that it would
14 in all those cases say, this is not an appropriate case
15 for an individual environmental assessment.

16 THE CHAIRMAN: Okay. Perhaps we don't
17 have to spend too much more time on this other than to
18 say that this is an area that I think the parties,
19 again towards the end of this case, should give some
20 serious consideration of exactly what provisions should
21 or should not be included within the class
22 environmental assessment that is being sought to be
23 approved in terms of provisions dealing with this kind
24 of thing.

25 MR. HUNTER: Perhaps if I could try to

1 wrap it up.

2 Q. Mr. Bisschop, one of the concerns I
3 have is that you are proposing terms and conditions for
4 the bump-up procedure which, as I understand it - and
5 my understanding may be incorrect - could mean a
6 substantial alteration to the terms and the conditions
7 outlined in the class environmental assessment.

8 And one of the major areas different, it
9 seems to me, is that the Ministry, MNR, is removing
10 itself from the process of dealing with the individual
11 or the group and attempting to come to some agreement
12 without obviating the rights of either party, and I
13 want to know: Is my understanding correct and, if so,
14 then why?

15 MR. BISSCHOP: A. Your understanding
16 that there is a change is correct, and I spoke to this
17 when I introduced term and condition No. 25 in direct
18 evidence and I can refer you to the transcripts, Volume
19 139.

20 Q. Mm-hmm.

21 A. Page 23740 to 237450 in which I spoke
22 to I believe three - I think there are two or three
23 changes between the class EA and the term and the
24 condition.

25 Just to briefly summarize why we, in

1 effect, eliminated items No. 1 and 2 on page 179, I
2 indicated that, in our view, we would deal with the
3 concern that was raised by the requesting party through
4 the timber management planning process and that we
5 would make all of our efforts during that process to
6 address the concern.

7 Therefore, our view is that it's in
8 effect redundant - or maybe that's not the right word -
9 that if the individual is dissatisfied with the
10 resolution of his concern with MNR, our view was there
11 wasn't much point in him asking us to prepare the
12 individual environmental -- an individual environmental
13 assessment to address his concern but rather to raise
14 his concern directly with the Minister of the
15 Environment.

16 So in effect, what we have done is - and
17 I think we discussed this in direct evidence perhaps in
18 response to some questions from the Board - that we
19 made it somewhat simpler, in the sense that people
20 would know that they would go directly to the Minister
21 of the Environment.

22 They wouldn't first have to go to MNR and
23 then to the Minister of the Environment; if they had a
24 concern of this nature, they could go directly to the
25 Minister of the Environment and have the ultimate

1 decision-maker address that concern immediately.

2 Maybe immediately is not the right word,
3 directly is probably the right word. There is nothing
4 too immediate about it, it seems.

5 Q. Thank you, Mr. Bisschop. I was aware
6 of the reasons, I just wanted to go through them with
7 you again.

8 Mr. Bisschop, Mr. Kennedy, 27 -- term and
9 condition 27. I am going to the words:

10 "MNR shall ensure that all renewals of
11 timber management plans shall be
12 undertaken in accordance with MNR's
13 timber management planning process."

14 Am I correct in understanding that when a
15 scheduled renewal is required that all of the steps --
16 that all of the planning requirements used in the
17 preparation of the first -- assume we have done a first
18 five-year plan pursuant to this approval, would all of
19 those planning steps be required in the subsequent
20 scheduled renewals?

21 A. Yes, scheduled renewals and
22 unscheduled renewals.

23 Q. Okay. I just wanted to make sure.
24 And do the bump-up provisions as described apply to
25 scheduled renewals?

1 A. Yes. Again--

2 Q. All timber management plans?

3 A. Again, all timber management plans
4 whether scheduled or unscheduled renewals.

5 Q. Okay.

6 MR. HUNTER: That was simple.

7 THE CHAIRMAN: Bound to get lucky one
8 time.

9 MR. HUNTER: That's right.

10 MR. MARTEL: Quit when you're ahead.

11 MR. HUNTER: How little we ask for.

12 Q. 28, Mr. Kennedy and Mr. Bisschop -
13 and again I may be hacking my way through an open
14 door - but it says:

15 "MNR shall ensure that all amendments to
16 approved timber management plans shall be
17 undertaken in accordance with the timber
18 management planning process."

19 Therefore, am I correct in assuming that
20 with respect to all of the -- that phrase 'all
21 amendments', that the public notification requirements
22 would have to be fulfilled?

23 MR. BISSCHOP: A. No.

24 Q. No?

25 A. There is specific --

1 Q. Life is not simple.

2 THE CHAIRMAN: You lose on that one. I
3 think you are talking about the administrative
4 amendment.

5 MR. BISSCHOP: That's right. There is
6 specific public consultation requirements for specific
7 categories of amendments.

8 MR. HUNTER: Q. So then it's not all
9 amendments. The phrase is:

10 "MNR shall ensure that all amendments
11 to approved timber management plans shall
12 be undertaken in accordance with MNR's
13 timber management planning process."
14 All amendments.

15 A. I think when you read the words
16 'timber management planning process' --

17 Q. Yes.

18 A. --you have to think of planning
19 process generally in the sense of preparation of timber
20 management plans, preparation of amendments to plans,
21 preparation of potential contingency plans.

22 THE CHAIRMAN: And it includes the
23 category of amendments, so you are following the timber
24 management planning process when it includes a category
25 of amendment which may be administrative in nature and

1 does not require all of the formalities of, say, some
2 of the other types of amendments.

3 Can't you read that, Mr. Hunter, in that
4 you are still following the process set out which
5 includes different categories of amendments?

6 MR. HUNTER: Q. Well, doesn't it mean --
7 isn't it, MNR shall ensure that amendments that are
8 minor and major to approved management plans shall be
9 undertaken in accordance with MNR's timber management
10 planning process?

11 If administrative amendments are excluded
12 from that sentence, as I understand it, then ought it
13 not simply read, "'minor and major amendments to
14 approved timber management plans shall be undertaken in
15 accordance with MNR's timber management planning
16 process." Is that...

17 THE CHAIRMAN: No, I just read it as it's
18 all within the overall process and the process--

19 MR. HUNTER: I see.

20 THE CHAIRMAN: --provides for different
21 categories of amendments.

22 MR. HUNTER: And I read it as 'all
23 amendments' meaning administrative, minor or major
24 would follow that process, and that is not what is
25 intended.

1 MR. FREIDIN: I think - Mr. Bisschop, you
2 can correct me if I'm wrong - the intention here in
3 reference to the timber management planning process in
4 line 3, the Ministry believes that the amendment
5 process which it has put forward is part of that timber
6 management planning process, and I think the evidence
7 was that MNR says that all amendments, regardless of
8 categories, will have to be planned applying the
9 technical requirements of planning as set out in the
10 process. The public notices provisions which will
11 apply will be those public notice provisions which are
12 described in the amendment part of the process which
13 Mr. Bisschop testified to at some length.

14 Now, is that right, Mr. Bisschop?

15 MR. BISSCHOP: We have taught you well,
16 Mr. Freidin.

17 MR. HUNTER: Q. Is that Mr. Freidin's
18 evidence or Mr. Bisschop's evidence?

19 MR. BISSCHOP: A. It's my evidence
20 through Mr. Freidin.

21 Q. And you adopt Mr. Freidin's evidence;
22 is that correct?

23 A. He regurgitated mine very well.

24 Q. Thank you.

25 MR. FREIDIN: Just trying to be helpful.

1 MR. HUNTER: Q. Term and condition 30.

2 Now, this may actually be fun.

3 MR. FREIDIN: 30?

4 MR. HUNTER: Yes.

5 MR. HUNTER: And I think, Mr. Chairman,
6 we could probably get involved in some very extensive
7 legal arguments on this, but I don't think we want to
8 do that today, so I just have a half a dozen of
9 questions which may help me understand what it is that
10 the Ministry is contemplating here.

11 Q. We have in this paragraph a phrase:

12 "...to incorporate within eight (8)
13 months of receipt of this approval
14 MNR..."

15 That is of the undertaking:

16 "...MNR shall revise the timber
17 management planning manual for the Crown
18 lands in Ontario to incorporate any new
19 or changed requirements of the timber
20 management planning process."

21 Okay. And then it says:

22 "And any associated terms and conditions
23 of this approval."

24 I want to understand, Mr. Bisschop, what
25 are any new or changed requirements of the timber

1 management planning process? What is that?

2 MR. KENNEDY: A. Perhaps I could address
3 that for you, Mr. Hunter.

4 Q. Okay.

5 A. An example of such a thing would be
6 the values map where we have indicated to you that we
7 have outlined a requirement for a values map in the
8 Class EA Document, Exhibit 4.

9 Q. Yes.

10 A. And yet to date we have not included
11 that direction in the Timber Management Planning Manual
12 and it is after the Board's decision that we see
13 bringing those two documents together, along with other
14 information, and make one planning manual that provides
15 the direction to those individuals to preparing plans.

16 Q. Which two documents?

17 A. In this case the Exhibit 4, the Class
18 EA.

19 Q. And...?

20 A. And the Exhibit 7 as it exists now,
21 the Timber Management Planning Manual.

22 THE CHAIRMAN: Well, why isn't that
23 covered by the last -- the second part of that sentence
24 that would result as part of the Board's decision and
25 would be incorporated as an associated term and

1 condition of the approval; is that not the case, as
2 opposed to something else which appears to precede the
3 approval? The change--

4 MR. HUNTER: Let me express --

5 THE CHAIRMAN: --a new or changed
6 requirement of the process.

7 MR. HUNTER: Let me explain my
8 understanding, and that for a moment conformed with Mr.
9 Kennedy's and now you have suggested something
10 different.

11 I understood that to mean that that would
12 be the amended Class EA. That, "incorporate any new or
13 changed requirements would mean", the Class EA as
14 amended by the Board, "and any associated terms and
15 conditions of this approval", that is such terms and
16 conditions of the approval which would exist, if you
17 like, outside of the amended Class EA.

18 Q. So I have an amended Class EA, I have
19 your approvals, the Ministry is suggesting you are
20 going to take Humpty and Dumpty and put them together
21 with the timber management plan; is that...

22 MR. KENNEDY: A. Well, at the time of
23 the writing of this draft term and condition, I believe
24 it's correct to say that we did not contemplate that
25 the current version of Exhibit 4 would be rewritten, it

1 would stay in the format it is in now.

2 Q. Yes.

3 A. Any suggestions for revisions or
4 changes to that would take the form of terms and
5 conditions, they would be terms and conditions that are
6 submitted by MNR and all other parties and, after
7 sufficient review, they would be put in the Board's own
8 words and issued as part of the Board's decision. So,
9 as such...

10 THE CHAIRMAN: Well, I think the wording,
11 Mr. Hunter, is that the environmental assessment - this
12 would be the normal form of an approval should one
13 issue - that the environmental assessment as amended is
14 hereby approved with subject to various terms and
15 conditions, and it's the amendment part, that how it
16 formally takes place, that I think is part of the
17 concern with the wording of this paragraph.

18 MR. HUNTER: Well, I don't understand Mr.
19 Kennedy's observation that the Class EA would sit over
20 here when, in that Class EA Document -- unless that
21 Class EA Document were to totally disappear, because
22 there are terms and conditions that they are proposing
23 which might be substantially different from those which
24 are in the Class EA.

25 MR. FREIDIN: Mr. Chairman, I think I

1 might be able to help, but I am not going to be able to
2 solve the problem now because - the problem that you
3 referred to a little earlier and I think we indicated
4 that it might be left until later - I think I should
5 perhaps just make a few additional comments.

6 In most class environmental assessments,
7 in fact in all class environmental assessments to this
8 point in time there has not been a hearing, and so the
9 form of those environmental assessment approvals is to
10 say: Yes, we give you approval, you follow what you
11 have outlined in your class environmental assessment.

12 Having regard to this particular matter
13 going to a hearing, having regard to the Board's view -
14 which the Ministry accepts - that the environmental
15 assessment is composed not only of the written
16 Environmental Assessment Document No. 4 but all of the
17 evidence before this Board, both documentary and oral,
18 the problem that we are going to face at the end of
19 this is whether in fact it makes any sense or it's even
20 possible to have an approval in the usual form of class
21 environmental assessments to say: The undertaking is
22 approved and you follow the environmental assessment.

23 Because the question will be: How will
24 one know whether you are following the environmental
25 assessment. We are going to be looking at tens of

1 thousands of pages of transcript and tens of thousands
2 of pages perhaps of documents, and so the Ministry has
3 attempted to address that at least at this stage by
4 trying to create terms and conditions which identify
5 the essential ingredients of the planning process and
6 the essential ingredients of other major commitments,
7 if I can use that word, that the Ministry feels it will
8 make and are appropriate to be imposed on it.

9 We believe that at the end of the piece
10 it would be desirable if we can have a stand alone
11 document --

12 THE CHAIRMAN: Encompassing all of those
13 requests?

14 MR. FREIDIN: Yes. The Board's order to
15 approve the undertaking, and we are asking for approval
16 to carry out activities and then the Board will say:
17 Subject to the following terms and conditions - and
18 there will be, I assume, suggestions to be additions
19 and changes to these - and it's the reasons for
20 decision that I referred to earlier which will
21 accompany the Board's order which will, in fact,
22 perhaps provide a little bit of neat direction as to
23 what those terms and conditions mean.

24 If there is going any confusion, the
25 terms and conditions obviously will be drafted in a way

1 which hopefully there will not be any confusion, but it
2 is our intention to, in fact, have the Board produce an
3 order, terms and conditions would stand alone because
4 of this problem I've indicated that this is a class
5 environmental assessment which, for the first time in
6 this province, has gone to a hearing and gives rise to
7 the problems I've just referred to.

8 THE CHAIRMAN: Okay. But do you envisage
9 that after all that is done, the Board has issued a
10 decision, has delineated the terms and conditions and
11 has specified the reasons or rationale or whatever
12 for its decision in Reasons for Decision, will there be
13 a document produced at that stage which attempts to do
14 what this document does with the addition of the
15 conditions and some of the rationale approved by the
16 Board?

17 MR. FREIDIN: Well, I think the terms and
18 conditions if they are specific enough, stand alone
19 enough, the undertaking or the term and condition which
20 says that the Ministry will take - and the term and
21 condition right here we are looking at, 30 - the terms
22 and conditions and this Board's order, it will
23 basically be in the form of conditions, and will
24 incorporate those provisions relating to the process
25 and make sure that they get into the Timber Management

1 Planning Manual and there will be consultation with the
2 Ministry of the Environment in relation to that
3 particular task.

4 Now, I mean, I discussed this with Mr.
5 Kennedy. Go ahead, Mr. Kennedy.

6 MR. KENNEDY: Well, Mr. Chairman, I was
7 just going to also point out that that there is also
8 the legislative requirement to have in place a planning
9 manual, according to the Crown Timber Act as we have
10 talked to earlier in our direct evidence, and we view
11 that that is the place in which to provide the adequate
12 direction to the field to ensure that the planning
13 process that is being outlined here as updated and any
14 new direction takes place through that manual. We see
15 that as a vehicle to deliver the results of this
16 hearing.

17 MR. FREIDIN: And just so there is no
18 misleading, there may be a term and condition that is
19 not a matter of process, you may impose a term and
20 condition that the monitoring program recommended,
21 whatever it is, be thus and so.

22 Well, that is not a matter of process
23 which gets into the Timber Management Planning Manual,
24 it is going to be a term and condition which will apply
25 and will have to be complied with.

1 But in terms of the process-related
2 matters, those which require direction to the field,
3 the intention is to take those and make sure they all
4 get put in one document and that is the Timber
5 Management Planning Manual as indicated by Mr. Kennedy.

6 MR. HUNTER: I think, Mr. Chairman, I
7 think I understand that and I am not particularly
8 happy about it. I think from our perspective that
9 while it's important that MNR be told what to do in
10 this area, I think it's equally important that the
11 public have something which they understand, and I have
12 always stressed throughout and certainly today and
13 previously, I have always looked at the Class EA as
14 being the principal document which would outline the
15 public process and steps which the Ministry has to go
16 through, and that that is essentially one of the --

17 THE CHAIRMAN: You mean Exhibit 4?

18 MR. HUNTER: Exactly.

19 THE CHAIRMAN: Right.

20 MR. HUNTER: And that, therefore,
21 throughout the course of today I have said amendments
22 to the Class EA principally in the area of what we
23 would call public participation or public notice or
24 decision-making.

25 There are other amendments, terms and

1 conditions which would be more appropriate to be placed
2 I think in the Timber Management Planning Manual which
3 is predominantly technical in nature, and I think as a
4 matter of public policy one ought to debate the
5 opportunity for the public to have in their possession
6 something called the Class EA which has a clearly
7 delineated focus in terms of process, in terms of
8 consultation and what is it that they cannot or -- what
9 it is that the Ministry is supposed to do and what it
10 is that they cannot do.

11 THE CHAIRMAN: Well, it's certainly going
12 to have to be a matter, I think, of some submissions
13 and argument at the end of the case as to the form that
14 any approval would take, because there are two
15 possibilities put forward, one being the Board's
16 decision including any conditions of approval, some of
17 which will obviously find their way into a revised
18 Timber Management Planning Manual.

19 MR. HUNTER: Yes.

20 THE CHAIRMAN: Or alternatively, a Class
21 Environmental Assessment Document suitably amended--

22 MR. HUNTER: Yes.

23 THE CHAIRMAN: --which in fact
24 incorporates as many as is practicable of any Board
25 conditions of approval within it that stands, not alone

1 per se, because it will have to also stand with some
2 other documents such as the planning manual and some of
3 the other things, as opposed to not having a document
4 in the form of Exhibit 4 at all.

5 And that if that were the case, the
6 public would be left with a 3- or 400 page Board
7 decision as it's reference document, which may or may
8 not be in these circumstances appropriate.

9 MR. HUNTER: Well --

10 MR. COSMAN: Mr. Chairman, I would like
11 to add to what Mr. Hunter has said -- he has just
12 because it would assist in some guidance of operators
13 as well as the public --

14 THE REPORTER: Excuse me, Mr. Chairman,
15 may I have a moment?

16 THE CHAIRMAN: Yes, certainly.

17 Just hold on a moment, Mr. Cosman.

18 ---Short recess

19 ---Discussion off the record

20 MR. HUNTER: Perhaps, Mr. Chairman,
21 provide a comment that those will be the end. I don't
22 think there is any great virtue in...

23 I have a lot of questions, I have a lot
24 of concerns. I think I can, just since Mr. Freidin was
25 allowed the opportunity to editorialize, perhaps I can

1 as well.

2 I think it is fundamental that the public
3 and perhaps even the timber industry have something
4 which clearly delineates the process the parties are to
5 go through in terms of timber management operations,
6 and I feel very strongly that if anything is going to
7 be rolled over it ought to be rolled over into the
8 Class EA which is understood and perceived to be
9 approved by this Board as distinct from being rolled
10 over into a resource management manual.

11 MR. MARTEL: What about the possibility
12 of having three documents as opposed to one; the timber
13 management plan, the EA as you say, and a separate
14 document for all the terms and conditions which are
15 going to be ordered by the Board, so that in fact if
16 someone wants to look at process, they can look at
17 process, they are not going to carry a volume this
18 thick trying to get a handle on everything, but have
19 three distinct documents which certainly would reduce
20 the work of staff in that they know what they are
21 looking for when they look for and make it easier for
22 the public, just one of three directions to determine
23 what they specifically want to see.

24 MR. KENNEDY: Mr. Martel, if I might
25 address that.

1 MR. MARTEL: Yes.

2 MR. KENNEDY: It would be very difficult
3 to implement the program as we have outlined by having
4 such a collection of documentation.

5 I have indicated in our evidence in
6 direct that we've had some difficulty in the plans that
7 we have produced to date having just two documents
8 available to our staff, and we feel very strongly that
9 we need to bring all that direction together, whatever
10 it is, at the end of our piece and put into one concise
11 direction to staff so that they can implement the
12 process.

13 MR. HUNTER: Well, we are not going to
14 resolve that today.

15 THE CHAIRMAN: No, I don't think we'll --

16 MR. MARTEL: You would need a trunk to
17 carry it though, Mr. Kennedy.

18 THE CHAIRMAN: Well, it may be that -
19 and, again, we will all have to give some serious
20 thought to the ultimate form - but it may be that the
21 Board can issue a decision containing rationale and
22 dealing with other matters within the decision to which
23 is appended some kind of revised Class EA which would
24 be the field document, so to speak, that would guide
25 both the public and the parties.

1 They may have to go to the decision to
2 find out why, if they wanted a rationale for why some
3 of the provisions were imposed or approved by the Board
4 in that form, but there would be a document.

5 I think the Board, even at this
6 preliminary stage, is concerned to some extent that
7 there won't be some document which will provide the
8 necessary guidance to all of those involved in the
9 timber management planning process at the end of the
10 day which will contain exactly what the process is all
11 about and what steps must be adhered to and carried
12 out, et cetera.

13 MR. COSMAN: Mr. Chairman, by joining
14 with Mr. Hunter, I think in principle everyone
15 recognizes that there should be clear guidance or, as
16 Mr. Kennedy said, concise direction, one concise
17 direction. As to whether that be in the form of the
18 amendments to the Timber Management Planning Manual or
19 the Class EA, or how it's to be done, I think your
20 direction to us was to consider it and present argument
21 on it is best at this time because perhaps we haven't
22 heard enough. We don't even know what is going to be
23 suggested by other parties.

24 THE CHAIRMAN: Well, that's right, and we
25 don't have to decide that question by any means now,

1 but it is something, because it is somewhat unique in
2 Ontario for us to be arriving at a situation in a
3 hearing with a Board decision pending on a Class
4 Environmental Assessment Document which is not, in
5 essence, in final form as one would likely be approved,
6 which has been the case, I think Mr. Freidin -- or I
7 guess it was Mr. Cosman that indicated, was previously
8 the case in all other class environmental assessments
9 to date, because there have been no hearings other than
10 this one.

11 MR. FREIDIN: I can tell you, Mr.
12 Chairman, it's not a matter that has gone unnoticed and
13 I have had discussions with some counsel on this very
14 matter, unhappy result of which --

15 THE CHAIRMAN: Well, let's move on and
16 worry about it some other day.

17 MR. HUNTER: Thank you.

18 I think, Mr. Chairman, with respect to
19 34 -- at page 15 at 34 at the bottom is the issue of
20 the translation of provision of materials to the native
21 communities. Mr. Bisschop had already given his views,
22 I will not get involved with that.

23 Q. I think if we could go to condition
24 40 -- oh yes, under 32, Mr. Bisschop, annual work
25 schedules. I have three questions which go to the

1 mechanics, or our concern about the mechanics of how
2 directions are given to the operators.

3 And the first question is: What is the
4 mechanism that would ensure that a timber management
5 plan is effectively implemented on the ground through
6 the annual work schedule?

7 Is there a piece of paper that connects
8 those two, or is it Mr. Groves?

9 MR. GROVES: A. I will answer the
10 question. Yeah, the annual work schedule is reviewed
11 and on the front page of the annual work schedule --
12 turn to the Timber Management Planning Manual.

13 Q. Yes, that is Table 6.4.2; is that,
14 annual report of...?

15 A. Page 113.

16 Q. I'm sorry, I have the wrong one.

17 Okay.

18 A. It's titled Figure 5.1.

19 Q. It's Annual Work Schedule, Title and
20 Approval page?

21 A. That's correct. You see partway down
22 that page, after it's prepared by, submitted by...

23 Q. I see.

24 A. "I have read this annual work
25 schedule and found it satisfactory

1 and consistent with the timber management
2 plan."

3 Q. Thank you.

4 A. Then signed by the district manager.

5 Q. Is there a transmittal document that
6 identifies the areas of concern and the protection
7 measures to be taken? In other words, what is it
8 that -- is there anything in the annual work schedule
9 which identifies those particular concerns?

10 A. You mean those concerns that were
11 identified in the timber management planning process?

12 Q. Yes. What is it there. I'm seeing
13 here, Annual Work Schedule, Title and Approval page:

14 "I have read the annual work schedule and
15 found it satisfactory and consistent with
16 the timber management plan."

17 Is there any other direction in the
18 annual plan which guides the operator?

19 A. Yes.

20 Q. Any other item in the schedule?

21 A. Every table is a reflection of the
22 timber management plan, therefore, the harvest table
23 which would be providing direction to the harvest
24 operator--

25 Q. Mm-hmm.

1 A. --lists the amount of area and in the
2 appendices you would find the appropriate maps, and if
3 there was modifications or reserves associated with
4 those harvesting areas, it would be identified on those
5 maps and in the stand listings.

6 Q. Okay. Well, perhaps I will try to --
7 correct me if I'm wrong, when we went through this we
8 did not see annual report of areas of concern and
9 protection measures. Now, was it ever intended that
10 there ought to be a page in here that would have that,
11 or is that --

12 MR. FREIDIN: Annual reports?

13 MR. GROVES: Maybe to answer the
14 question. Yeah, you're talking annual reports or
15 annual work schedules?

16 MR. HUNTER: Q. Annual work schedules.

17 MR. GROVES: A. Repeat the question, the
18 table with regard to...?

19 Q. Areas of concern and protection
20 measures. Does the annual operator - does the annual -
21 does the operator have in their hands a piece of paper,
22 as distinct from the timber management plan, that says:
23 Here are the areas of concerns and here are the
24 protection measures which are to be put into place or
25 which are in place?

1 A. Those prescriptions, as I mentioned
2 earlier, are identified on the maps.

3 Q. But it's on the map?

4 A. And the area associated with that --
5 like, if you turn to Table 5.1.

6 Q. Okay.

7 A. Which is page 115 of the Timber
8 Management Planning Manual.

9 Q. Yes. Okay. Take me through it, so I
10 understand it.

11 MR. FREIDIN: Which page again, Mr.
12 Groves?

13 MR. GROVES: 115.

14 You see Table 5.1 identifies forest unit,
15 age-class, amount of area in normal, modified and then
16 the amount of area in reserve. That gives the results
17 of the timber management planning processes for those
18 harvest blocks, that is how much area will be normally
19 harvested, modified harvested, how much area is tied up
20 in reserves.

21 Matching that set of numbers is a map
22 that illustrates that area and details on the ground
23 for the operator the results of that AOC decision in
24 the timber management planning plan or the actual
25 prescription, so he knows what area he's allowed to

1 harvest in under normally, harvest modified and/or not
2 harvest at all in reserve.

3 So that is the prescription laid out in
4 detail.

5 MR. HUNTER: Q. So it is principally the
6 map which guides his activity; is that correct, in
7 terms of --

8 MR. GROVES: A. I think if you are
9 talking the day-to-day operator, that is the thing that
10 would be used actually in the field, would be the map.

11 Q. That is all I'm asking.

12 MR. KENNEDY: A. In addition, Mr.
13 Hunter, there are several authorizing documents that
14 are used in conjunction with the annual work schedule.
15 Those are listed in Appendix 9 to Exhibit 4, and we
16 have included such things as the approval to commence
17 cutting operations, the work permit, and special
18 conditions to the licences.

19 Q. Okay.

20 A. I beg your pardon, it's Appendix 10.

21 Q. No. 40 -- oh perhaps, we could go
22 back, Mr. Bisschop, and I just want to deal very
23 briefly with 39 with respect to the notices of aerial
24 spraying.

25 Would it be possible for the items

1 identified on 39(a) - perhaps not all of them - (i)
2 through to (x) -- (ix), you say:

3 "Project descriptions will be prepared
4 and will include..."

5 The concern is that the communities
6 obtain adequate information about proposed spraying
7 activities in the form of a notice and we were
8 contemplating that the notice to those communities
9 would include those items identified on (a)(i) through
10 (ix), and obviously we are concerned about translation
11 of such materials as well.

12 Do you have any difficulties with that,
13 or is this someone -- Mr. Churcher?

14 MR. CHURCHER: A. Well, first of all, I
15 have a question of clarification. Are we talking about
16 aerial application of insecticides or herbicides,
17 because that term and condition --

18 Q. I am presuming both for the purposes
19 of this question, but if that doesn't make it clear,
20 then correct me.

21 A. Okay.

22 Q. Why would they be different if they
23 are herbicides or insecticides; I mean, other than
24 specific items which that might put into it. If you
25 are going to spray for insecticides notice is

1 required --

2 A. The public notification requirements
3 for herbicides and that -- would be included in the
4 regular timber management planning process as has been
5 described by this panel, and I think for the details of
6 that I might leave that for Mr. Groves or someone else
7 on the panel to talk about how herbicide projects are
8 worked into the annual work schedule.

9 Now, as far as aerial insecticide
10 programs are concerned, this information would be
11 available, or most of that information (i) to (ix)
12 would be available at the information centre, the
13 public open house at the time that the draft project
14 proposals are being presented to the public.

15 Q. Yes, and I am concerned about how
16 they get from the information centre in Sioux Lookout
17 to the communities, and what is the most effective way
18 to do that.

19 A. I think along the same lines as the
20 previous discussion we had earlier today about holding
21 open houses in locations -- specific locations, if
22 there was a request to hold an open house in a specific
23 location that that would be -- that request would be
24 entertained.

25 Q. Okay. And if we could go to

1 condition 40.

2 THE CHAIRMAN: I am going to write it
3 down for the fourth time, Mr. Hunter. Are you going to
4 get there?

5 MR. HUNTER: Oh, I start thinking of all
6 the things I haven't done and I go back.

7 Q. The Ministry is not asking the Board
8 obviously for approvals for these guidelines, as I
9 understand it, Mr. Bisschop?

10 MR. BISSCHOP: A. That's correct.

11 Q. Okay. It's identified on 40 that --
12 40(a)(i) through (x) shall be used and (v)(i) through
13 (iv) shall be used.

14 And we may have covered this one when we
15 discussed term and condition 19, so I am going to go
16 back. My main concern is: What process is there to
17 ensure that these guidelines have in fact been
18 considered, reviewed and applied, if necessary; what is
19 the mechanism?

20 I believe we touched upon that in part in
21 the discussion of the planning teams, but...

22 MR. KENNEDY: A. I think the answer is
23 very much as we have outlined, that it would be -- the
24 expectation would be that the review and approval
25 process would have an element of ensuring that those

1 kinds of standard practices have been reviewed -- I'm
2 sorry, have been incorporated in the preparation of the
3 plan, as well as there is a second check, if you will,
4 and that is through the regular operation audits that
5 we conduct of our program.

6 Q. Okay. I think our concern is, Mr.
7 Bisschop - correct me if this is wrong - there is
8 nothing in the manual that requires an acknowledgement
9 that those guidelines -- well, those items identified
10 under section 40 have in fact been reviewed, taken into
11 consideration and acknowledged. If I am wrong, could
12 you point that out to me, where that provision is?

13 MR. FLEET: A. Mr. Hunter, I don't
14 believe that it is in the Timber Management Planning
15 Manual, but if I could refer you again to 813A.

16 Q. Mm-hmm.

17 A. This time page 263.

18 Q. Yes, okay.

19 A. Okay. This is the district review
20 bulletin, there is a companion regional review bulletin
21 and the office bulletin.

22 The second full paragraph under
23 introduction:

24 "In this bulletin the phrase the
25 'reviewer verifies' is used with the

1 following direction. The reviewer will
2 confirm that a requirement has been met
3 and, if it has not been met, it will be
4 identified on the preliminary list of
5 required alterations."

6 In that sense then there is confirmation.
7 For example, if you go over to the next page where it
8 talks to "consistent with guidelines and policies", and
9 so forth, there is direction in this bulletin and in
10 the other bulletins with respect to verifying
11 guidelines, plus consistent use of guidelines and so
12 forth, application of them.

13 Q. But there is no precise provision
14 which requires a check off. I just wanted to know if I
15 had missed something either here or in the timber
16 management plan. Okay.

17 Mr. Bisschop, if we could go to 45,
18 and I would go to 45(c) and the particular provision
19 is:

20 "MNR shall ensure that the following
21 wildlife information is collected for the
22 use in timber management planning:
23 (c) sites of occurrence, special habitat
24 features and/or areas of present and
25 future high value as habitat for wildlife

1 species of local concern."

2 And would you have any difficulty with
3 the added provision that would say:

4 "... and species that are harvested by
5 native communities --" "...local
6 concern, and species that are
7 harvested by native communities."

8 I'm trying to right here at this point
9 get directly to harvesting activities in close
10 proximity to reserves and...

11 MR. BISSCHOP: A. I don't have any
12 particular difficulty with it. Perhaps Mr. McNicol can
13 speak more specifically to what (c) addresses and make
14 a comment on that addition.

15 MR. McNICOL: A. I think implicit in
16 your question, Mr. Hunter, there seems to be an
17 implication that we would be managing those areas that
18 I assume you are considering for subsistence use,
19 vis-a-vis wildlife, differently than we would manage
20 areas outside of those areas used by natives for
21 subsistence. Is that the implication?

22 Q. No, no. I am just asking that
23 special - special - particularized delineation of
24 wildlife information is collected in relationship to
25 not just local concern but native concern. I was just

1 adding some specificity to the phrase 'local concern',
2 that is all. There is nothing magical or I am not
3 asking...

4 A. I understand. I would submit though
5 that the species harvested by native communities would
6 be covered off through our area of concern planning
7 process for those special habitats that were important
8 for those species.

9 Q. Okay.

10 MR. HUNTER: I have no further questions.

11 THE CHAIRMAN: Thank you, Mr. Hunter.

12 Well, ladies and gentlemen, I think we
13 will -- we were going to commence tomorrow at eight
14 o'clock and perhaps we should still do that if we want
15 to ensure that we finish both parties tomorrow, and
16 perhaps by lunch time we will have a better idea how
17 long we should break for lunch, before we commence the
18 afternoon session.

19 Was there any particular order between
20 the two parties who are going tomorrow that they had
21 amongst themselves arranged for?

22 MS. BAIR-MUIRHEAD: Yes, Mr. Chairman.
23 My understanding is that I would proceed first tomorrow
24 morning, and I am prepared to do that.

25 THE CHAIRMAN: Very well. Do you have

1 any objections to that, sir?

2 MR. AXFORD: (nodding affirmatively)

3 THE CHAIRMAN: Okay. We will commence
4 with you then at eight o'clock tomorrow morning.

5 MR. KENNEDY: Mr. Chairman, if I might
6 ask, is there any exhibits from the two parties that
7 the panel members should be aware of?

8 MS. BAIR-MUIRHEAD: At this point just
9 the usual.

10 THE CHAIRMAN: Well, the ones we have
11 before us?

12 MS. BAIR-MUIRHEAD: Yes.

13 THE CHAIRMAN: As opposed to any
14 additional ones?

15 MS. BAIR-MUIRHEAD: That's correct, you
16 are aware of.

17 THE CHAIRMAN: Are you aware of what we
18 have before us?

19 MS. BAIR-MUIRHEAD: Well I think, Mr.
20 Chairman, Exhibit 700, 4 and so on.

21 MR. KENNEDY: Mr. Axford?

22 MR. AXFORD: Just one particular map that
23 I have to find that's over in the corner there.

24 MR. KENNEDY: Very good. We will give
25 you some assistance in that matter.

1 MR. FREIDIN: Mr. Chairman, can we take a
2 few minutes and address the issue of the scoping
3 session, in particular, to Panel 17?

4 THE CHAIRMAN: Well, we can -- you mean
5 to choose a date?

6 MR. FREIDIN: I would like to have a date
7 chosen.

8 THE CHAIRMAN: When do you contemplate
9 reaching that?

10 By the way, I think the Board should
11 announce to the parties some information concerning
12 Dean Baskerville's appearance. Dean Baskerville will
13 appear, we are given to understand, for a total not
14 exceeding nine hearing days.

15 He will be available on December 4th,
16 which is a Monday, 5th, 6th and 7th. He will be
17 unavailable on December 8th. He will then be available
18 again on December 11th for the remainder of that week
19 including, if necessary, the Friday.

20 The amount of time available for direct
21 examination by Mr. Turkstra should not exceed two days
22 and hopefully will be less than that. We are,
23 therefore, going to allot a total of six and a half
24 days maximum for cross-examination with a half day
25 remaining for re-examination, should the same become

1 necessary, and we will be canvassing the various
2 parties who wish to cross-examine Dean Baskerville (a)
3 with respect to their estimates as to how long they
4 expect to be; and, (b) so that we, the Board, can
5 allocate specific times and a specific order of
6 examination with respect to all parties.

7 Dean Baskerville has commitments with the
8 University in January and following and will be
9 unavailable for any other time, other than the days we
10 have indicated and, under the circumstances and in
11 recognition that he's coming from another jurisdiction
12 and is appearing voluntarily at the request of the
13 Board, the Board has no intention of extending his stay
14 beyond the nine days, and all parties will have to
15 operate within those time constraints.

16 So bearing that in mind we want, Mr.
17 Freidin, to get an indication when you think you will
18 reach Panel 17 in terms of the direct evidence?

19 MR. FREIDIN: The New Year.

20 THE CHAIRMAN: That is the beginning of
21 the New Year?

22 MR. FREIDIN: Well, I think the estimate
23 that Ms. Murphy gave for direct evidence on 16 was a
24 day and a half. By my calculations we should be
25 finished this panel - I am just thinking out loud now -

1 the end of next week, which means we would be starting
2 Panel 16 on November 7th.

3 I can't remember what the estimate of
4 cross-examination was, but we have ten days
5 approximately for cross-examination on Panel 16 left in
6 November. I can't remember how that stacks up against
7 the estimates.

8 If we finish the 16, I guess the answer
9 is, yes, we will have 17 right off the bat in the New
10 Year.

11 THE CHAIRMAN: And we will be commencing
12 I believe on January the 9th--

13 MR. FREIDIN: Right.

14 THE CHAIRMAN: --in the New Year. And we
15 will be breaking likely for the negotiating sessions
16 that we have planned for the suggested weeks of, I
17 think it was February 17th and 24th.

18 MR. FREIDIN: I guess we will have to see
19 perhaps your draft direction. It was my understanding
20 that we were planning on breaking at the end of the
21 Ministry's case for that, whatever period of time
22 regardless of when that was, as opposed to setting it
23 off in February and having the Industry start in
24 advance.

25 One of the ideas was hopefully it would

1 help the Industry focus its case if that negotiation
2 took place before they even started. So I think all of
3 us were -- I think that was my understanding and --

4 MR. COSMAN: Certainly would shorten
5 things.

6 THE CHAIRMAN: All right. Well, let's do
7 this, Mr. Freidin: If you don't mind, we will address
8 this tomorrow.

9 MR. FREIDIN: Okay, sure.

10 THE CHAIRMAN: Because we would like to
11 run over the calendar ourselves and see how it accords
12 with what our procedural directive will say which, by
13 the way, you will have tomorrow.

14 MR. COSMAN: After Panel 17, Mr.
15 Chairman - just because I am going to have to tell some
16 people on Thursday as to when our case is likely to
17 start or, in fact I will be asking tomorrow for a start
18 date so I can have people slotted into their
19 schedules - will there be any other Ministry evidence,
20 or does Mr. Freidin know at this time, following 17?

21 THE CHAIRMAN: Well, there is the matter
22 of the possibility of another plan and, if that is the
23 case - and, again, that will be part of our procedural
24 directive production tomorrow - and if the Ministry
25 chooses to put before the Board something else, that

1 will take a certain amount of time which we have
2 allocated within the procedural directives if that
3 becomes a possibility.

4 MR. FREIDIN: There is that, Mr.
5 Chairman, and there is one outside possibility of
6 additional evidence that I should advise you of, and
7 that is in relation to the clearcut exercise that you
8 referred to the other day. It's a matter of some
9 importance I think and, as Mr. Kennedy indicated, as
10 soon as he gets off this panel he intends to sit down
11 and see whether some agreement can be reached on the
12 interpretation of the results of that exercise.

13 Whether agreement is reached or not,
14 there is the possibility that evidence in relation to
15 that exercise will be put forward to the Board, and if
16 a decision is made that that is going to occur, I don't
17 know whether that would be between 16 and 17 or whether
18 it would be after 17.

19 THE CHAIRMAN: So that you are not
20 anticipating starting 17 until when exactly, based on
21 what we know now?

22 MR. FREIDIN: Based on the assumption
23 that Panel 16 cross-examination ends before Dean
24 Baskerville starts, Panel 17 would start no earlier
25 than January the 9th, but could start later than that

1 if any one of two situations arise:

2 Firstly, we do lead some evidence or
3 evidence is led in relation to the clearcut exercise
4 which was undertaken; and, second, whether the Ministry
5 decides to submit further evidence by way of an
6 additional plan and that sort of thing.

7 MRS. KOVEN: You are saying you would
8 lead the evidence on clearcut before you started 17?

9 MR. FREIDIN: Might do that.

10 MRS. KOVEN: Okay.

11 MR. FREIDIN: So I can say at the
12 earliest on January the 9th. It might be later based
13 on any one of the two possibilities that I have
14 referred to.

15 THE CHAIRMAN: So we should arrange for
16 the scoping in advance of that and I suppose in advance
17 of Dean Baskerville?

18 MR. FREIDIN: Yes. The earlier that we
19 can have that matter scoped the sooner people who are
20 going to have to prepare their -- you know, consider
21 the finalization of what their evidence will be can
22 actually scope their efforts.

23 And I think from a very selfish point of
24 view I would like that to be done and take place before
25 the Christmas holidays.

1 MR. MARTEL: We haven't even got
2 statement of issues, a date for those; have we?

3 MR. FREIDIN: Well, I guess -- no, I
4 guess really I am asking for statement of issues first,
5 I want those right away, I mean as soon as possible,
6 and then we can deal with the scoping, but at least the
7 statement of issues will give us some idea.

8 THE CHAIRMAN: And there is the other
9 matter that we may wish to also scope Dean
10 Baskerville's evidence as well?

11 MR. FREIDIN: Right. I understand that
12 was part of the order.

13 THE CHAIRMAN: So that we will have to
14 look at all of those things. We will try and get back
15 to you tomorrow with at least 17.

16 MR. FREIDIN: I will take a look and if I
17 have any more specific suggestions on dates I will
18 provide them tomorrow.

19 THE CHAIRMAN: Okay.

20 Mr. Cosman, we still can't tell you but
21 we should be able to tell you tomorrow--

22 MR. COSMAN: Okay.

23 THE CHAIRMAN: --in terms of when you
24 might be likely to start. We will try and work it out.

25 Thank you. Eight o'clock tomorrow

1 morning.

2 ---Whereupon the hearing adjourned at 5:05 p.m, to be
3 reconvened on Thursday, October 25th, 1989,
4 commencing at 8:00 a.m.

25

